93-647

NO. _____

FILED
OCT - 4 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

MAGNOLIA BAR ASSOCIATION, INC., MISSISSIPPI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, RAINBOW COALITION, THE MISSISSIPPI ASSOCIATION OF BLACK SUPERVISORS, MISSISSIPPI CONFERENCE OF BLACK MAYORS, GEORGE FLAGGS, BENNIE THOMPSON, SHEILA JOHNSON, AND SAM McCRAY,

PETITIONERS

VS.

ARMIS E. HAWKINS, DAN M. LEE, LENORE L. PRATHER, MICHAEL D. SULLIVAN, EDWIN L. PITTMAN, FRED L. BANKS, JR., CHUCK R. McRAE, JAMES L. ROBERTS, JR., AND JAMES W. SMITH, JR., JUSTICES OF THE SUPREME COURT OF THE STATE OF MISSISSIPPI; MIKE MOORE, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI, KIRK FORDICE, GOVERNOR OF THE STATE OF MISSISSIPPI, AND DICK MOLPUS, SECRETARY OF STATE OF THE STATE OF MISSISSIPPI, MEMBERS OF THE STATE BOARD OF ELECTION COMMISSIONERS; THE MISSISSIPPI REPUBLICAN PARTY EXECUTIVE COMMITTEE; AND THE MISSISSIPPI DEMOCRATIC PARTY EXECUTIVE COMMITTEE,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. May a district court properly consider evidence relevant to the totality of the circumstances surrounding a claim under Section 2 of the Voting Rights Act of 1965, as amended, when determining whether plaintiffs have established the three *Thornburg v. Gingles* preconditions?

2. Did the Court of Appeals apply the proper legal analysis in reviewing the evidence presented by the parties on the issue of legally significant white bloc voting?

3. Did the Court of Appeals accord undue weight on the issue of legally significant white bloc voting to the fact that two incumbent black Supreme Court Judges, appointed in succession and during litigation, had subsequently won elections to fill the same seat on the Mississippi Supreme Court Central District?

4. Did the Court of Appeals apply the proper legal standard on plaintiffs' vote fragmentation claim in reviewing the evidence on the issue of whether or not plaintiffs had established the first *Thornburg v. Gingles* precondition , that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district"?

5. Did the Court of Appeals err by substituting its judgment for that of the District Court on the issue of legally significant white bloc voting on plaintiffs' vote fragmentation claim?

LIST OF ALL PARTIES

The parties to the proceeding below were the petitioners, Magnolia Bar Association, Inc., Mississippi State Conference of the National Association for the Advancement of Colored People, Rainbow Coalition, Mississippi Association of Black Supervisors, Mississippi Conference of Black Mayors, George Flaggs, Bennie Thompson, Sheila Johnson, and Sam McCray, and the respondents, Armis E. Hawkins, Dan M. Lee, Lenore L. Prather, Michael D. Sullivan, Fred L. Banks, Jr., Chuck R. McRae, Edwin Lloyd Pittman, James L. Roberts, Jr., and James W. Smith, Jr., Justices of the Supreme Court of the State of Mississippi, Mike Moore, Attorney General of the State of Mississippi, Kirk Fordice, Governor of the State of Mississippi, Dick Molpus, Secretary of State of the State of Mississippi, Members of the State Board of Election Commissioners, the Mississippi Republican Party Executive Committee, and the Mississippi Democratic Party Executive Committee.

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OFFICIAL OPINIONS BY LOWER COURTS

Petitioners seek review of a decision rendered by the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit's decision is reported as *Magnolia Bar Ass'n, Inc., v. Lee,* 994 F. 2d 1143 (5th Cir. 1993); [Supp. App. 1sa-19sa]. The Court of Appeals affirmed a decision rendered by the United States District Court for the Southern District of Mississippi. The District Court's decision is reported as *Magnolia Bar Ass'n, Inc. v. Lee,* 793 F. Supp. 1386 (S. D. Miss. 1992); [Supp. App. 20sa-78sa].

STATEMENT OF THE GROUNDS FOR INVOKING JURISDICTION

Petitioners seek to review, on Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, the judgement and decision rendered in *Magnolia Bar Ass'n, Inc. v. Lee,* 994 F. 2d 1143 (5th Cir. 1993); [Supp. App. 1sa-19sa] on July 9, 1993.

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. Sections 1254 and 2101 (c). The decision rendered by the United States Court of Appeals for the Fifth Circuit conflicts with the decision rendered by the United States Court of Appeals for the Eleventh Circuit in *Hall v. Holder,* 955 F. 2d 1563 (11th Cir. 1992), cert. granted *sub nom. Holder v. Hall,* 61 U.S.L.W. 3596. Additionally, the Fifth Circuit Court of Appeals, in *Magnolia Bar Ass'n, Inc. v. Lee,* supra, decided important questions of federal law in a way that conflict with the decisions of this Court in *Thornburg v. Gingles,* 478 U. S. 30 (1986) and *Anderson v. City of Bessemer City, N. C.,* 470 U. S. 564 (1985).

STATUTE INVOLVED

42 U.S.C. 1973

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a maanner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f) (2) [42 U.S.C. 1973b (f) (2)], as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

STATEMENT OF THE CASE

Petitioners, civil rights organizations and four (4) individual African-American voters, filed the instant action on August 17, 1990 challenging the present districting scheme and the method of election for Mississippi Supreme Court Judges. [1] At the time the action was filed, the Supreme Court was the only

[1] The present action is the second case challenging the method of electing Supreme Court Judges as being violative of Section 2 of the Voting Rights Act. Another case, *McCray v. Mississippi State Board of Election Commissioners*, was filed in 1984 but voluntarily dismissed in 1989.

appellate court in the State.[2] It consists of nine (9) members elected from three (3) districts to eight (8) year staggered terms of office. That is, each Supreme Court District elects three members, at-large, to numbered posts and for staggered terms. The three (3) districts dissect the State and its black population in East-West configurations. [App. 60a]. Each District includes approximately one-third of the State's land area and population. District Three, which covers the Northern Part of the State, has a total population of 815,365 persons and a black population of 264,978 persons. District One, which covers the Central part of the State, has a total population of 887,966 persons and a black population of 414,478 persons. And, District Two, which covers the Southern part of the State, has a total population of 869,885 persons and a black population of 235,601 persons. Mississippi has a total population of 2,573,216 persons of whom 915,057 are black. The black population is concentrated mostly in the western one-half of the State.

Supreme Court Judges are elected in partisan and general elections, with a majority vote required for party nomination. Vacancies are filled by gubernatorial appointment with special elections to fill the unexpired term.

Petitioners challenge the present districting scheme and method of electing Supreme Court Judges as violative of Section 2 of the Voting Rights Act of 1965, as amended, 42 U. S. C. 1973. A trial was held on their Section 2 claim from February 25 to 27, 1992.[3] At trial,[4]

[2]After the trial of the instant case, the Mississippi Legislature passed a bill creating an intermediate court of appeals consisting of five (5) judges elected from single-member districts that are coterminous with the State's Congressional Districts. H. B. No. 548, Laws of Miss. 1993.

[3]The District Court, after a hearing on October 18, 1991, denied petitioners' motion for a preliminary injunction. See, *Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. at 1391; [Supp. App. 22sa]. The District Court, in making its ruling, considered the evidence presented at both the preliminary injunction hearing and the trial. *Id.*, at 1391; [Supp. App. 22sa].

[4]References in this Petition for Writ of Certiorari to the "trial" include both the trial on the merits in February, 1992 and the preliminary injunction hearing on October 18, 1991.

petitioners presented evidence on both their at-large multi-member district challenge and their line challenge. *Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. at 1401-1421; [Supp. App. 20sa-78sa], [App. 1a-58a]. The District Court found, with respect to petitioners' multi-member challenge in the Central Supreme Court District, that petitioners had proven that the black population was sufficiently large and geographically insular such that a single-member black majority district could be created and blacks were politically cohesive. *Id.*, at 1403-05; [Supp. App. 71sa-74sa]. Petitioners presented expert testimony that white bloc voting was statistically and substantively significant.[5] That expert testimony was

[5]Petitioners' expert witness in the areas of analysis of voting patterns by race, racial bloc voting, political systems and quantitative and socioeconomic analysis, and minority vote dilution [App. 38a] testified that voting patterns in the Central Supreme Court District were severely racially polarized. [App. 1a-7a, 38a-41a]. Those patterns, he opined, are "[s]tatistically and substantively significant." [App. 1a]. His analysis revealed that blacks primarily had been elected to office in districts that were majority black. [App. 5a-7a]. Dr. Lichtman analyzed bi-racial contests involving circuit and chancery court elections in 1989 and 1990, [App. 1a, 4a], legislative elections in 1991, [App. 5a-6a], and various other elections including elections in the Second Congressional District and various counties over a 25 year period. [App. 39a].

He found that "[t]here were a couple exceptions, including the Reuben Anderson/Richard Barrett election, but these exceptions were "abberational and did not indicate a new trend or change in the existing pattern of racial bloc voting in black vs. white contests." [App. 40a]. He further opined that in the Banks vs. Dillard election a highly unusual number of whites [30%] crossed over and voted for the black candidate — Banks. Justice Banks' election was a special circumstance attributable to his incumbency, a highly unusual solid black vote and an atypical white vote for him. [App. 39a-41a].

Dr. Lichtman's expert conclusions were supported by the anecdotal testimony of Bob Owens, Tyree Irving, Honorable Lillie Blackmon Sanders, Solomon Osborne, Honorable Patricia Wise, and Honorable James Graves. Specifically, Bob Owens testified that the Banks campaign strategy was to spend all of their funds in the white community to get 25-30% white cross-over vote and depend on Justice's Banks ties to the black community to get the black vote. [App. 34a-37a]. The Banks campaign spent $130,954.46 compared to $49,035.41 spent by the Dillard campaign. The testimony of Irving, Sanders, Osborne, Wise, and Graves shows that it is extremely

supported by anecdotal testimony as well as other expert testimony regarding the rate of political participation being affected by socioeconomic conditions.[6] The cumulative effect of petitioners' racial bloc voting evidence is that white bloc voting is legally significant in the Mississippi Supreme Court Central District and throughout the State. [App. 1a-58a]. Such voting patterns are legally significant, according to petitioners' evidence, notwithstanding the fact that Reuben Anderson and Fred Banks two black incumbents appointed to the same seat on the Supreme Court approximately one year each before running for special elections had won their elections. [App. 1a-7a, 39a-41a].

Respondents attempted to controvert petitioners' legally significant white racial bloc voting evidence with the testimony of Kathryn Hester. [App. 31a-32a]. Respondents tendered Ms. Hester as an "expert and political analyst in voting patterns." [App. 31a]. The District Court did not accept her as an expert in that area. [App. 32a]. The respondents, thereafter, made an offer of proof wherein Ms. Hester stated that Anderson's and Banks' elections were "now the norm rather than an aberration." [App. 32a].

The District Court, in deciding that petitioners had failed to prove that white bloc voting was legally significant did not consider the anecdotal testimony of Owens, Irving, Graves, Sanders, Wise, and Osborne. Nor did the District Court consider the expert testimony of Engstrom on the issue of legally significant white bloc voting. The District Court did, however, consider this evidence in its analysis of the totality of the circumstances. *Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. at 1407-1412; [Supp. App. 56sa-78sa].

unusual to have the amount of money for a judicial campaign that the Banks' campaign had, and it is more unusual to ignore the black community and expect to receive solid black support.

Dr. Lichtman's conclusions were corroborated by the expert opinion of Dr. Richard Engstrom that racial socioeconomic characteristics affected the level of political participation by the races. [App. 42a-43a].

[6] Id.

The District Court found that petitioners had proven the three (3) *Thornburg v. Gingles* preconditions on their line challenge. That is, the Districty Court found that petitioners had proven that a black majority district could be created, Id. at 1416, [Supp. App. 70sa-73sa], blacks are politically cohesive, Id. at 1416, [Supp. App. 73sa], and that white bloc voting is legally significant. Id. at 1416; [Supp. App. 73sa-74sa]. The District Court concluded, however, that under the totality of the circumstances the state policy for maintaining its East-West line configuration was not tenuous and foreclosed petitioners' "district lines vote dilution claim." Id. at 1417; [Supp. App. 75sa]. The trial court entered judgment dismissing petitioners' case.

Petitioners timely appealed the District Court judgment to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit ruled that, under the law in the Fifth Circuit, "section 2 claims must be analyzed under a two-part framework." *Magnolia Bar Ass'n, Inc., v. Lee,* 994 F. 2d 1143, 1146 (5th Cir. 1993); [Supp. App. 7sa]. A plaintiff, such as petitioners, "must first satisfy" the *Thornburg v. Gingles* preconditions. *Id.* at 1146; [Supp. App. 7sa]. Thereafter, the plaintiffs "must then offer evidence of the circumstances of the local political landscape..." *Id.* at 1146; [Supp. App. 7sa, 9sa]. The Fifth Circuit did "not reach [petitioners'] arguments that the district court erred in assessing the totality of the circumstances." *Id.,* at 1151; [Supp. App. 19sa].

The Court of Appeals addressed the issue of legally significant white bloc voting on petitioners' multi-member challenge. The Court held, "[a]lthough a close call, we think that the district court could reasonably conclude that the election of two black judges from the Central District was not aberrational, but rather, probative evidence that whites would not vote as a bloc so as to usually defeat the preferred supreme court candidate of black voters." *Id.* at 1149; [Supp. App. 14sa]. The appellate court "also [rejected] the [petitioners'] related argument that the election of Anderson and Banks had to be discounted because of

their status as incumbents." *Id.* at 1149; [Supp. App. 15sa]. The Court placed great weight on the Anderson and Banks election as evidence that white bloc voting was not legally significant.

With respect to petitioners' line challenge, the Court of Appeals found that the District Court's finding that white bloc voting was legally significant was error.

The appellate court affirmed the District Court's judgment on the *Thornburg v. Gingles* preconditions, except for the legally significant white bloc voting precondition on petitioners' line challenge, and the appeals court did not review evidence considered by the District Court under the totality of the circumstances analysis. The Fifth Circuit entered judgment on July 9, 1993, and petitioners now petition this Court for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ARGUMENT I

A District Court may properly consider evidence relevant to the totality of the circumstances surrounding a claim under Section 2 of the Voting Rights Act of 1965, as amended, when determining whether plaintiffs have established the three *Thornburg v. Gingles* preconditions.

The Fifth Circuit Court of Appeals held, in the instant case, that totality of the circumstances evidence may be considered only after a voting rights plaintiff has proven, by a preponderance of the evidence, the three *Thornburg* preconditions. *Magnolia Bar Ass'n, Inc. v. Lee,* 994 F. 2d at 1146-47; [Supp. App. 7sa-9sa]. Indeed, the Court of Appeals did not consider the evidence considered by the District Court under that Court's totality of the circumstances analysis on petitioners' line challenge. This holding by the Court of Appeals is in conflict with the holding by the United States Court of Appeals for the Eleventh Circuit in *Hall v. Holder,* 955 F. 2d at 1568. The Eleventh Circuit held, in *Hall v. Holder,*

that "the totality of the circumstances surrounding a Section 2 claim may properly be considered when determining whether plaintiffs have established the three *Gingles* preconditions." *Id.* at 1568, 1570-1573. The Eleventh Circuit's approach is the more reasoned approach.

This Court should grant review, on certiorari jurisdiction, to resolve this conflict.

ARGUMENT II

The Court of Appeals did not apply the proper legal analysis in reviewing the evidence presented by the parties on the issue of legally significant white bloc voting.

This Court, in *Thornburg v. Gingles,* supra, at 56, held that there are a number of factors which affect the determination of legally significant white bloc voting. Specifically, this Court stated that the following factors may be considered when deciding the issue of legally significant white bloc voting:

> "the nature of the allegedly dilutive electoral mechanism; the presence or absence of other potentially dilutive electoral devices such as majority vote requirements, designated posts, and prohibitions against bullet voting; the percentages of registered voters in the district who are members of the minority group; the size of the district; and in multi-member districts, the number of seats open and the number of candidates in the field."

Id. at 56.

The Court further instructed lower courts that:

> [I]n a district, where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the

district did not experience polarized voting in that election; special circumstances, such as the absence of an opponent, incumbency, or the utilization of bullet voting, may explain minority electoral success in a polarized contest.

Id. at 57.

It is clear, from its opinion, that the Court of Appeals did not apply the proper legal analysis in reviewing the evidence presented by the parties on the issue of legally significant white bloc voting. For instance, petitioners presented evidence from black judicial candidates for Mississippi's Chancery and Circuit Courts who testified that the 4th Circuit, 7th Chancery, 17th Chancery, and 6th Circuit Court Districts were unusually large and posed a formidable obstacle to black candidates ability to effectively campaign. Each of those districts is much smaller than any of the three (3) Supreme Court Districts. They also testified that they had difficulty raising money for campaigns. Their white opponents raised more money than them. None, with the exception of Ms. Sanders, was an incumbent. Justice Banks, on the other hand spent more than 2 1/2 times the money his opponent spent, and he still almost lost. Justice Banks, an incumbent, had to wage a stealth campaign so that white voters would not recognize his race. Numbered post election features present in Supreme Court elections had been found dilutive in some of the State's Chancery and Circuit Court Districts in *Martin v. Allain,* 658 F. Supp. 1183 (S. D. Miss. 1987). A majority vote is required for party nomination. Candidates must run in designated posts, and bullet voting is prohibited under the current electoral scheme. The Court of Appeals did not discuss any of this evidence in their legally significant white bloc voting decision. More importantly, the Court of Appeals did not discuss the testimony of Bob Owens and Dr. Allan Lichtman concerning the advantages Justice Banks had running as an incumbent. In short, the Court of Appeals did not apply the proper legal analysis in reviewing the evidence presented by the parties on the issue of legally

significant white bloc voting.

Since the Court of Appeals' decision conflicts with the "general principals" announced by this Court in *Thornburg v. Gingles,* supra at 57-58, and since this is an important issue in voting rights litigation throughout the country, this Court should grant review, on certiorari, to the United States Court of Appeals for the Fifth Circuit.

ARGUMENT III

The Court of Appeals accorded undue weight on the issue of legally significant white bloc voting to the fact that two incumbent black Supreme Court Judges, appointed in succession and during litigation, had subsequently won elections to fill the same seat on the Mississippi Supreme Court Central District.

The Court of Appeals accorded undue weight to the fact that two incumbent black Supreme Court Judges, appointed in succession and during litigation, had subsequently won elections to fill the same seat on the Mississippi Supreme Court Central District. The Court, in essence, reasoned that the elections of the black incumbents to fill the same seat, in succession, proved that white bloc voting is not legally significant in the Mississippi Supreme Court Central District. The weight accorded the election of the black incumbents was unwarranted and reversible. Former Justice Anderson was appointed to the Supreme Court by the Governor while litigation was pending approximately one year prior to his election. He ran against an avowed segregationist and won. Justice Anderson resigned from the Supreme Court and Justice Banks was appointed by Governor Mabus to take his place. Justice Banks served on the Supreme Court approximately one year prior to his election. He spent 2 1/2 times his opponent and barely won. Nevertheless, neither Justice Anderson's nor Justice Bank's elections proved a new voting pattern nor

trend had emerged among white voters. Out of several hundred election results studied over a 25 year period, the evidence established a pattern of persistent and pervasive racially polarized voting. Even in Justice Banks election, 70% of the white voters voted against him. This Court, in *Thornburg v. Gingles,* supra, at 57, stated that "a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than the results of a single election."

The Fifth Circuit's holding gives more weight to a single or couple of isolated elections than it does to a pattern of racial bloc voting that extends over a period of time. The Fifth Circuit's holding conflicts with this Court's holding in *Thornburg.*

This issue is important because, if not reversed it could be used, particularly in the South, to impede political progress being made by minority voters in fully exercising their right to vote and electing candidates of their choice.

ARGUMENT IV

The Court of Appeals did not apply the proper legal standard on plaintiffs' vote fragmentation claim in reviewing the evidence on the issue of whether or not plaintiffs had established the first *Thornburg v. Gingles* precondition — that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district."

The Court of Appeals, in reviewing evidence on petitioners' vote fragmentation claim, found that they had not established that a black voting age majority three-judge single-member district could be drawn in a North-South direction if the existing district lines were

altered. *Magnolia Bar Ass'n, Inc. v. Lee,* 994 F. 2d at 1148, 1150. The Fifth Circuit requires minority voters to prove that a majority minority voting age population district could be created under the first prong of the *Thornburg* analysis. This Court, in *Thornburg,* stated that "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Thornburg v. Gingles,* supra, at 49. This Court did not require minority groups to prove that they could constitute a majority of the voting age population in a single-member district. This issue is extremely important in cases, such as the instant case, where the proposed districts would be unusually large and county boundaries respected. Where, as in Mississippi, minority voters are concentrated in a certain region of the State, the districts to be drawn are unusually large, and an attempt is made to preserve county boundaries, then the minority voters should be allowed to prove the first part of the *Thornburg* precondition by drawing a majority minority single-member district, in total population, instead of a majority minority voting age population single-member district. In the present case, petitioners' expert demographer drew a majority minority three-judge district respecting county lines running North to South.[7] [App. 55a-58a].

Since this issue is important to congressional, legislative, and judicial elections, and since the Fifth Circuit places a heavier burden on minorities in establishing the first *Thornburg* precondition than the *Thornburg* decision, this Court should grant petitioners' Petition for a Writ of Certiorari on this issue.

[7]Petitioners' expert demographer and cartographer, Senator Henry Kirksey, created a majority minority voting age population three-judge district using two split counties (but no split precincts). [See, App. 46a-47a, 59a].

ARGUMENT V

The Court of Appeals erred by substituting its judgment for that of the District Court on the issue of legally significant white bloc voting on plaintiffs' vote fragmentation claim.

A finding that white bloc voting is legally significant is reviewable under Rule 52(a)'s clearly erroneous standard. *Thornburg v. Gingles,* supra, at 78. "If the district court's account of the evidence is plausible in light of the record reviewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Anderson v. City of Bessemer City, N. C.,* 470 U. S. at 573-74. The District Court's account of the *Thornburg* preconditions evidence on petitioners' line challenge is plausible in light of the entire record. The trial court's finding that white bloc voting throughout the State of Mississippi is legally significant is not clearly erroneous. The Court of Appeals should not have substituted its judgment on this issue for that of the District Court's. To do so was reversible error and an abuse of discretion. See, *Anderson v. City of Bessemer City, N. C.,* supra, at 573-575.

This Court should exercise discretionary review, grant petitioners' Petition, and reverse the Court of Appeals actions in setting aside the District Court's finding on legally significant white bloc voting on petitioners' line challenge.

CONCLUSION

Because the Court of Appeals for the Fifth Circuit rendered a decision which conflicts with decisions in the United States Court of Appeals for the Eleventh Circuit and this Court, this Court should grant petitioners' Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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Dated: October 4, 1993

APPENDIX 1

PARTIAL TESTIMONY OF

ALLAN J. LICHTMAN

ON PLAINTIFFS' PRELIMINARY INJUNCTION HEARING HELD ON OCTOBER 18, 1991 INCORPORATED INTO THE TRIAL ON THE MERITS

Pages 111-125

BY MR. RHODES:

Q. Dr. Lichtman, maybe I can just get to the heart of the matter and ask you whether or not you analyzed election returns for the State of Mississippi and whether or not based upon that analysis you have an opinion as to whether or not there is racially polarized voting in Mississippi.

A. I have extensively analyzed voting returns in various jurisdictions in the State of Mississippi using methodologies standard in the field of voter analysis. There is no question that the results of those many analyses demonstrate clearly that there is a persistent and severe pattern of racially polarized voting generally in the State of Mississippi.

Q. Now, have you also analyzed elections, black versus white contests, involving judicial races?

A. Yes. From my initial testimony in the *Martin v. Allain* case, I analyzed all of the judicial black and white elections held at that time. And to make sure my testimony was updated for this hearing, I also did an additional analysis of black versus white judicial elections held in 1989 and 1990.

Q. And the voting patterns by race, you testified that there was severe racially polarized voting. Were those patterns statistically significant?

A. Oh, yes. Statistically and substantively significant.

No question.

Q. Dr. Lichtman, could you explain what this table is and where the information on this table came from?

A. Yes. This is the result of exactly the same kind of analysis that I performed in the *Martin v. Allain* case and the many other matters I have been involved in Mississippi. It's a standard procedure known as extreme case analysis, where you look at the most heavily black and the most heavily white precincts within a county. In some cases we have 90 percent black and 90 percent white. In other cases we have 80 to 70 percent. All of this is based on voting-age population for the 1990 census. It's a very simple technique. It requires no statistical inference. You simply look at the actual vote tallied in those precincts within those counties for the black candidate and you then compare the results within the heavily black precincts and the heavily white precincts. If voting is polarized along racial lines, what you would expect to find, as we did find in the previous analyses I had done, is a much heavier vote being cast for the black candidates in the heavily black precincts than for the black candidates in the heavily white precincts. Obviously when you move from 70 percent to 90 percent precincts, your expectations may be somewhat different because in the 90 percent precincts they're much more homogeneous with respect to blacks. But, nonetheless, when you look at the comparison at any one of these three levels between the black precincts and the white precincts, if voting is polarized along racial lines, you would expect to see substantially a higher percentage for the black candidates in the black as opposed to the white precincts, which is what I found in all of those many analyses that I have done previously. And so this simply reports them for each level of black precincts and each level of white precincts that we found in these judicial elections the percentage of the vote actually cast for the black candidates. In those areas we had 90 percent black precincts. The vote for the black candidate was, on average, a grand mean of all the precincts, 89 percent. In

sharp contrast, in the 90 percent plus white precincts, the vote cast for the black candidate was only 11 percent, a very substantial difference between the black vote — the vote for the black candidate in the black precincts as compared to the vote for the black candidate in the white precincts.

Similarly, among the 80 percent precincts, they cast 65 percent of their vote for the black candidates whereas the 80 percent white precincts cast 14 percent of their vote for the black candidate. And, finally, in the 70 percent plus black precincts, the black candidates received on average 67 percent of the vote whereas the 70 percent plus white precincts, the black candidates only received 15 percent of the vote. These patterns are indicative of a continuation in the 1989 and 1990 elections of very extreme racial polarization. In fact, the polarization is equally or more extreme than that which I observed in judicial elections held prior to 1989.

Q. And did you not use the election returns and precinct data by race in performing your analysis?

A. The analysis is performed on the basis of the official election returns, the identification of white and black candidates, and the 1990 census data by precinct which indicates the percent of blacks in the voting-age population. The same data, same methods that social scientists rely on for this type of analysis and that I relied on in the past.

MR. RHODES: Your Honor, we would now tender he document as an exhibit.

THE COURT: P-6 will be received into evidence.

(Exhibit Number P-6 received into evidence.)

BY MR. RHODES:

Q. Dr. Lichtman, I would like to hand you what's been introduced in evidence as Plaintiffs' Exhibit 3 and ask you to take a minute to look over it for the central Supreme Court district.

A. Yes.

Q. And it shows — which is the first district on that table.

A. Yes.

Q. The bottom, it shows total population for that district, white population with the percentage and black population with the percentage.

A. I see it.

Q. Let me ask you, have you analyzed election returns in any of those counties that's included in the central Supreme Court district?

A. As I said, I did not selectively analyze any election returns. I analyzed all chancery and circuit court elections, including the Barry Ford election, that were available. And this Ford election and all others are factored into these numbers. Now, many of the counties that I analyzed are, in fact, contained within this central district because they had black versus white judicial elections in 1988 or 1989, including Hinds County, by far the largest of the jurisdictions within the central district, Holmes County, Humphreys, Noxubee, Sharkey, Sunflower, Warren, Yazoo, just to name a few. So the great bulk of what is in here — Claiborne was also encompassed within the analysis that I did. And all races, regardless of their outcome, are reflected in the table that we have before us today.

Q. Beside analyzing judicial elections, have you analyzed other elections such as legislative elections or elections for boards of supervisors or any other office?

A. Well, not specifically to update for this hearing, but I have analyzed elections for numerous as I have testified, in many cases previously, for numerous public offices within the State of Mississippi, legislative offices, presidential primaries, executive offices, a great number of different type. Congressional offices. A great number of different type offices in addition to judicial.

Q. Looking at what the population is and what it is by race for the First Supreme Court District which is the central district, and taking into account and consideration the analysis of election returns that you have done and that you have come to a conclusion that there is racially polarized voting, do you have an opinion

as to whether or not the racially polarized voting would impact the ability of blacks to elect a candidate of their choice from the First or Central Supreme Court District?

A. To put it very simply, clearly in a district that has a 52 percent white population majority, and although I don't have the numbers before me, it's going to be a larger white voting-age population majority, the results of racially polarized voting analysis have a direct bearing on this district. Given a pattern of severe racially polarized voting, a district with a white majority would be a district that would impede the opportunities for the black voters of that district to be able to elect candidates of their choice. That would be true even if we presumed equal white and black turnout because of the significant white population and voting-age population majority. In other words, this conclusion does not depend upon any presumptions about white or black turnout. If, in fact, as I have generally found in Mississippi black turnout was lower than white turnout, that would further impede the opportunities for black voters to elect candidates of their choice. But the argument does not depend upon that to conclusion.

Q. Now, in analyzing the trends of voting by the races in Mississippi, were you able to discern or ascertain whether or not there is a trend now to elect black candidates from white majority districts?

A. Let me answer that in two ways. Certainly the updated racial polarization analysis does not show a trend which indicates that polarization doesn't come anything close to being eliminated. Taking into account all the races, all the elections, there's still severe polarization. One also has some other relevant updated data to look at in terms of whether there is a trend, that is, we have more than 170 elections held state-wide for the state legislature. I looked at those for my testimony in *Watkins v. Mabus* and looked at the updates for the most recent elections and I found that all but one instance blacks were only being elected to legislative positions in districts that were 60 percent or more black

and for the most part were only being elected in districts that were 65 percent or more black. We also have nearly 80 circuit and chancery court districts. Again, with the one exception that's been much discussed here, blacks have succeeded in electing candidates of their choice, once again, only in black majority districts. So you are talking there about between the chancery and circuit court and the state legislature, a state-wide sample of some 250 elections, and the pattern is overwhelmingly consistent with the persistence of racially polarized voting and the persistent difficulty of blacks being able to elect candidates of their choice in anything but black majority districts.

Let me make clear that when social scientists talk about racially polarized voting or patterns, we don't mean it's got to be every black voter and every white voter. Nothing like that, of course. What we are talking about is that generally blacks tend to vote for candidates of their choice and generally whites tend to vote for different candidates of their choice. We are talking about black electoral success. We are obviously not talking about shutting out blacks entirely from the possibility of being elected in white majority districts. Again, we are talking about patterns. And it — the pattern here is not a slight one. It's an overwhelming pattern that blacks have real opportunities to elect in black majority districts but not in white majority districts. And the fact that there are exceptions here and there in no way detract from the finding of that overall pattern, and I see no trend that indicates that pattern has been in any substantial way changed.

Q. I believe you also testified in *Watkins v. Mabus* that all things being equal, special elections could pose some potential problem for black candidates. Have I misstated the testimony?

A. I'll tell you exactly what I said.

Q. Yes, sir.

A. What I said was all other things being equal, and I was very careful to say that, any socioeconomically

disadvantaged group is probably better off with elections that are not held as special elections but are held as general elections, all things being equal.

Q. Well, if —

MR. SANDERS: May it please the Court, I object to that testimony and that answer and I would move to strike that because as I understood Mr. Rhodes' tender of this witness, the field was in analyzing voter returns and not — he was not offered to give his opinion as to voter behavior, which is, I think, as I appreciate it, what he just testified to. And I object to that and move to strike.

THE COURT: Overruled.

BY MR. RHODES:

Q. Now, you are saying all things being equal, if special elections are held wherein you have single member majority or super majority of black districts and/or you have an opportunity to hold regular elections where you might have an at-large system and majority white districts, which one of those situations would be more harmful to black voters?

MR. SANDERS: May it please the Court. May I have a continuing objection to this line?

THE COURT: Yes, sir.

A. Clearly under conditions of racially polarized voting that we found here, the two hypotheticals imposed would mean all things are no longer equal. Under those circumstances there is no question in my mind that it would be preferable in terms of opportunities for minorities to hold the elections in districts that have substantial black majorities than in districts with white majorities irrespective of the time period of those elections. Certainly the composition of the district would be much more important.

MR. RHODES: If the Court will indulge me one moment.

(Off the record.)

MR. RHODES: We tender the witness, Your Honor.

APPENDIX 2

PARTIAL TESTIMONY OF

HONORABLE JAMES GRAVES
CIRCUIT COURT JUDGE, 7TH CIRCUIT COURT DISTRICT

AT THE TRIAL HELD ON FEBRUARY 25, 1992

Pages 18-26

BY: MR. RHODES:

A. I am the circuit judge in Hinds County.

Q. And how long have you been a circuit judge?

A. I was appointed by the governor in February of 1991 and then I was elected to that position in September of 1991.

Q. And were you elected from a single-member district or from the district at large?

A. It was from a single-member district.

Q. And what district were you elected from?

A. That was Hinds County, Subdistrict 3.

Q. Now, is that a majority black or majority white subdistrict?

A. It's a majority black subdistrict.

Q. Judge Graves, since you have been serving as a circuit judge, have you been subjected to any sort of political pressure or pressure from the people that whom elected you?

A. None whatsoever.

Q. When you were campaigning for the office, were you able to raise money from all segments of the society?

A. I guess to some extent the answer to that would be yes, but primarily my contributions came from the black community.

Q. Were you able to raise a lot of money with which to wage your campaign?

A. Overall, I think we raised in the neighborhood of

$25,000, which I would not consider a lot of money.

Q. Now, when you were campaigning for your position, were you invited by various civic groups to come speak and to come into the — come to the organizations with which to address them?

A. I was invited by some civic groups and organizations to come and address those organizations.

Q. Now, the organizations and civic groups that invited you, were they predominantly black or white?

A. The predominantly black organizations and civic groups are the ones that extended an invitation for me to come.

Q. Did you receive any invitations from the white civic groups and organizations within your district?

A. I think I received one from the Hinds Southwest Community Association. But that would be the only one that I received.

MR. RHODES: If the Court will indulge me a moment.

(Off the record.)

MR. RHODES: We tender the witness, Your Honor.

REDIRECT EXAMINATION

BY MR. RHODES:

Q. Judge Graves, when you were invited to the white law firms to campaign and when you were campaigning, did you receive a substantial monetary contribution? By "substantial" I mean at least 30 percent of the total amount of money that you received in your campaign. Did you receive a substantial monetary contribution from the white firm?

A. One of the problems I have is there is this nondisclosure requirement under the Canons of Ethics in terms of the amount of contribution. So when I would go to these firms, of course I wouldn't accept any contributions and it was never disclosed to me what individual contributions amounted to. I think under the statute when those amounts exceed $200, they are required to be reported to the Secretary of State's office. So then when they are disclosed in that manner to the Secretary of State's office, I am privy to those types of

disclosures. But what would happen at some of those firms is individual members of the firms would just write checks and those would be given to my campaign manager, and I never knew who gave them or how much. So the best I could give you would be an estimate as to the amount of aggregate contributions from those firms. And an estimate would be out of $25,000 — and I am trying to do my math because you said about 30 percent, so I guess that would be around $7,000. I can't be sure. I think I can say safely that less than 40 percent would have come from those types of contributors, and it may very well have been less than 30 percent. But, again, because of what we are not supposed to know and what my campaign manager made sure I didn't know, I can't say with a lot of accuracy about the amount of those contributions.

Q. Could you tell whether or not the majority of your contributions came from the white community or the black community?

A. The majority of the contributions came from the black community.

APPENDIX 3

PARTIAL TESTIMONY OF

HONORABLE LILLIE BLACKMON SANDERS
FORMER CIRCUIT COURT JUDGE, 6TH CIRCUIT
COURT DISTRICT

AT THE TRIAL HELD ON FEBRUARY 25, 1992

Pages 36-45

BY MS. McDONALD:

Q. Would you state your name for the record, please?

A. Lillie Blackmon Sanders.

Q. And Ms. Sanders, where do you live?

A. Natchez, Mississippi.

Q. Okay. And you are a practicing attorney in Natchez?

A. Yes, I am.

Q. Okay. What, if any, political offices have you held?

A. I have served as the circuit judge for the Sixth Judicial District on an appointment from Governor Mabus back in 1989.

Q. Okay. And you say that's the Sixth District?

A. Sixth Judicial District.

Q. Circuit district.

A. That's correct.

Q. And tell me what counties does that district comprise?

A. Adams, Jefferson, Franklin, Amite, and Wilkinson.

Q. And who was your opponent in that race?

A. I ran for the special term and my opponent was Richard Watson.

Q. I'm sorry. I sort of skipped. You had to run for special election, right?

A. Yes, I did.

Q. Okay. And your opponent was?

A. Richard Watson.

Q. And is he the present circuit judge?

A. Yes, he defeated me and he went on to win a full term this past year.

Q. Okay. Now, you said that the counties are comprised of Adams, Franklin, Jefferson, and Wilkinson.

A. That's correct. There were five counties in the circuit court district.

Q. All right. And you had Amite, right?

A. Amite, yes.

Q. And you had to campaign in that five-county area?

A. Yes.

Q. About how — could you give us some sense of how large that area is?

A. Probably about 100 miles square.

Q. And did you encounter any difficulties in campaigning in that geographical area?

A. Yes. Campaigning in a rural Area is where people are spread out much further and you basically campaign seven days a week, six or seven hours a day if you weren't working, you know, Sundays — Sundays were the worst day because you were campaigning from early in the morning until late at night and you would sometime travel great distances, 60, 70 miles, to meet ten people at a gathering.

Q. So the campaigning is expensive, or is it?

A. Its expensive and it's tiring on the body, too.

Q. Okay. Concerning your — during your campaign, what kind of contributions did you get? I understand that you don't know who gave you the contributions, but do you know the amount versus your opponent that you received?

A. I saw one campaign expenditure for my opponent, and this was like a day before election day. He had spent approximately $60,000.

MR. SANDERS: May it please the Court, I object to that. That's not responsive to the question. And expenditures, of course, do not necessarily relate to contributions. He may have been spending his own

money.

THE COURT: All right. Please listen and answer the question that is asked. Sustain the objection. The question was how much contributions did you receive and how much did he receive.

A. Okay. My contributions were, for the circuit court race, was like $14,000 to about $80,000 that was contributed to Mr. Watson-s campaign.

BY MS. McDONALD:

Q. Now, you have also — during the course of that campaign, would you tell me what kind of groups or organizations did you speak to?

A. Churches, organizations, Kiwanis.

Q. Were they generally black churches or —

A. Predominantly. All of my audiences were predominantly black with the exception of a few white organizations that invited me to speak. The Rotary Clubs, Kiwanis group, and a couple of other community groups invited me to speak to them.

Q. But for every, say, ten black groups that you spoke to, how many white groups would you say you spoke to?

A. A half maybe, you know. There were very few white groups. Less than five probably.

Q. During the course of the campaign?

A. During the entire campaign.

Q. And how long did that campaign last?

A. From April to June.

Q. Okay.

A. Well, really from February to June.

THE COURT: When you say white groups and black groups, how many of the black groups — how many black groups did you speak to, predominantly black?

A. Probably 100. Probably 100.

THE COURT: And of those, how many would be church groups?

A. I would say about 50 or more.

BY MS. McDONALD:

Q. Now, during the course of the campaign, you had literature and your opponent had literature. Could you

describe that for the Court, please?

A. Okay. For the most part we had, we both had, just cards and we would pass out leaflets. Toward the end of the campaign a card went out to white constituents with a picture of me and a picture of my opponent. I was upset because the picture of me was like a copy made out of a newspaper and I appeared looking like a gorilla with his new picture of himself beside it.

Q. Okay. Would that be what Plaintiffs have introduced as Exhibit P-33?

A. If I could see it.

Q. I will show it to you.

A. Yes, that's it.

Q. Okay. Now, you mentioned that that document went to white constituents. How do you know that?

A. Because a white constituent brought it to me. She was upset that something like that was being sent to the people in her neighborhood.

Q. Okay. How do you know that it didn't go to black neighborhoods?

A. Because once I had found out it had gone out, I tried to determine whether or not anybody else had received it, any black voters in my district, and I didn't find one. It went to specific voting precincts and only to the white voters.

Q. When you say specific voting precincts," what do you mean by that?

A. For instance, in Adams County, the precinct called Duncan Park is a predominantly white precinct, and each time you have an election, regardless of what kind of election, a thousand voters will vote there. And in my race there were probably 25 or 30 blacks who vote there. The numbers always correlate with the number of blacks registered versus white, so it ' s like a thousand to 25 votes .

Q. Now, you have — or have you run for any other political office?

A. Yes. In the 1990 elections I ran for chancery court judge in the Seventeenth Judicial District.

Q. And what counties or which counties does that district comprise?

A. Wilkinson, Adams, Jefferson, and Claiborne.

Q. And who was your opponent?

A. Hyde Rusty Jenkins.

Q. Is he the incumbent judge?

A. Yes, he was the incumbent at that time, and he defeated me in that race.

Q. What was the margin there?

A. He won by 142 votes.

Q. Do you know what the black voting age population is?

A. I believe it's about 67 percent.

Q. Now, would you tell us — how was campaigning in that election? Was it any different than in the election with Judge Watson?

A. No, it was the same kind of campaigning, door to door, churches, in rural areas, and it stretched from the Claiborne county line to the Wilkinson county line which is probably 80 miles, just straight down the Mississippi River. And I went from communities to churches to groups and things of that nature. And, ironically, a card like this was circulated. I don't have a copy of it. It was the same card. It had the same exact information on it on my side, except on this side it had Mr. Jenkins picture and his qualification.

Q. Now, was there also any other ads presented in any other counties?

A. In each — well, in Claiborne County I am sure there was an ad featured in the newspaper that showed the pictures of the judicial candidates.

Q. Would that be Plaintiffs' Exhibit P-34? I will show it to you.

Q. How much did you spend, Ms. Sanders?

A. Approximately $14,000.

Q. And do you have any knowledge — which election was that that you spent the 14,000?

A. That's the circuit court.

Q. What about the chancery court?

A. In the chancery race I spent about $12,000.

Q. And do you have any independent knowledge of what your opponent spent?

THE COURT: Answer that question. Don't answer the amount.

A. Yes.

BY MS. McDONALD:

Q. What is that knowledge based on?

A. My conversation with Mr. Jenkins.

Q. Was it more than what you spent?

A. Considerably.

M. SANDERS: May it please the Court? We have the same objection. That's hearsay as the conversation was with a non-party.

THE COURT: Sustained.

MS. McDONALD: That's all we have, Your Honor.

THE COURT: All right. Mr. Kirchmayr, you may cross-examine the witness.

APPENDIX 4

PARTIAL TESTIMONY OF

HONORABLE PATRICIA WISE
CHANCERY COURT JUDGE, 5TH CHANCERY COURT DISTRICT

AT THE TRIAL HELD ON FEBRUARY 25, 1992

Pages 78-85

BY MS. McDONALD:

Q. Would you tell the Court from what district you come?

A. I am one of four chancellors in the Fifth Chancery District of the State of Mississippi and I sit as a Division 4 chancellor for our chancery division.

Q. Okay. Is it a subdistrict?

A. Yes. I am from — I was elected from Subdistrict 2.

Q. Now, during the course — when were you elected?

A. I was elected in — well, I was sworn in July 3 of 1989. The election took place June 20, 1989.

Q. Okay. And were you — was the district that you now are chancellor from, was that as a result of the *Martin v. Allain* case?

A. Yes.

Q. Now, during your election back in 1989, who was your opponent?

A. From the Democratic standpoint in the primary, Sarah O'Reilly Evans, William Patterson, as Democrats, and from the Republican, which is in the primary, Billy Keyes and Frank Coxwell. I won the Democratic primary and was their nominee, and then in the general election I faced a Republican candidate, Billy Keyes.

Q. Did you campaign or did you make any speeches to any civic organizations?

A. I did.

Q. Were they primarily black or white?

A. They were about 99.9 percent all black in terms of the request of coming and being able to speak at their meetings or such.

Q. Were you invited to any white civic groups or churches or whatever?

A. I do not — I was not invited. I was just trying to recall even at what percent. I don't recall ever being invited to speak as a candidate in any form other than a black forum. There might have been, and I don't — I don't even remember there being, really, white persons in the audience of the different organizations that I spoke to.

Q. Okay. Could you describe in a little bit further detail how you — well, let me just ask you this. In terms of raising money, did you have any difficulty raising money?

A. Yes. Very much.

Q. Would you describe that, please?

A. Well, first of all, in general, there was just difficulty soliciting as a judge. Of course, I could not ask directly for funds, and there was a Committee to Elect Patricia Wise Chancery Judge. But there was difficulty in the amount of money, the persons who would really be in a position to give money, black people who would be in a position to give money, and there was — there was just an overall difficulty in raising money to pay for media print campaign.

Q. Were you ever, or to your knowledge as much as you can know, I guess, do you know whether you got any law firm support generally, not specifically.

A. Generally black law firms. The reason why I will say black law firms is because we did attempt — well we didn't attempt. We did mail from my Committee to Elect Patricia Wise letters soliciting campaign donations and such.

Q. To black and white law firms?

A. To black and white law firms.

Q. Now, during the course of your election, or during

the course of the 1989 election, did you run into any racial appeals in terms of your opponent or anyone else?

A. Yes, I did. Taking the issue of Billy Keyes first, and that was in the general election schedule, June 20, '89, there was a pamphlet that he distributed, Committee to Elect Billy Keyes, with my picture on one side and his picture on the other side listing from his perspective our qualifications and credentials.

Q. And —

A. From the primary I would run into, in terms of the campaigning, Bill Patterson and difficulty in that he was free, if you will, to campaign in what we considered the black neighborhoods, giving fish fries and such and that kind of thing, and his being invited to speak at functions that were primarily black oriented, but never being asked to participate in any functions that were just a reverse.

Q. So you never participated in any or were invited to any?

A. No. You have to remember that in — well, in 1989, the election of judges was very new, and one of the things that the candidates did, not only myself but others, was to just to spread the word and educate the community. So, many organizations took it upon themselves, I mean black organizations such as fraternities, sororities, and such, to sponsor forums. They invited all the candidates that were running, that had qualified to run to the different activities.

Q. Were these black fraternities?

A. These were black fraternities and sororities.

Q. Now, is Mr. Keyes black or white?

A. Mr. Keyes is a white male.

Q. What about Mr. Patterson?

A. Mr. Patterson is a white male.

MS. McDONALD: I beg the Court's indulgence.

(Off the record.)

Q. Judge Wise, you mentioned that there was a card that was sent around by Mr. Keyes that had your picture on it and his picture. Would it be similar to Plaintiff's Exhibit P-32?

A. Yes, very, very similar.

Q. Okay. And tell us what Plaintiff's Exhibit P-32 is, for the record.

A. All right. It's a pamphlet or a sheet of paper I am holding that is a copy, I assume, and it's an advertisement paid by the Committee to elect W. O. "Chet" Dillard Supreme Court Judge. And it shows Justice Banks on one side and Judge Dillard on the other side and the heading says "Exercise your constitutional right to vote on the Mississippi Supreme Court" —

MR. KIRCHMAYR: Your Honor, we are going to object. That's in evidence. I think it speaks for itself.

THE COURT: All right. Overrule the objection.

BY MS. McDONALD:

Q. Now, Judge Wise, did you consider the pamphlet that Mr. Keyes distributed to be a racial appeal?

A. Yes, I did. Yes, I did.

Q. Do you consider that exhibit to be a racial appeal?

A. Yes, I do.

Q. Judge Wise, were there any black chancellors elected in Mississippi prior to 1989?

A. No, not to my knowledge.

Q. And who — other than yourself who are the black chancellors ?

A. A colleague that sits also in the Fifth Chancery District, Judge Denise Sweet Owens, and myself are the only two black chancellors.

Q. In the state.

A. In the state.

MS. McDONALD: That's all I have, Your Honor.

THE COURT: Did you campaign in any white neighborhoods?

A. We attempted to campaign somewhat in white neighborhoods on a very small scale, but we quickly realized that that would not be what we wanted to do because the campaign material would not stay up even in that borderline part of Jackson in which my subdivision lie. We would put it up one night and it

would be down the next day or that afternoon, so we decided that it would be better not to waste the funds and the campaign material attempting to campaign in the white neighborhoods.

THE COURT: Did you do any house-to-house campaigning in black neighborhoods?

A. Yes.

THE COURT: Did you do any house-to-house campaigning in white neighborhoods?

A. Yes.

THE COURT: As far as personal calling as opposed to putting up signs.

A. Some parts of subdivision to — still a mixture of black and white, and with that we did, without knowing per se who actually lived in the house, would knock on the door and try to distribute our campaign literature.

THE COURT: So I take it, then, that where there was an all-white neighborhood that you just simply avoided doing door-to-door campaigning in those areas?

A. Yes. Your Honor. for a number of reasons.

THE COURT All right. So your appeals were — would it be fair to characterize your campaign as being an appeal to the black voters in your subdistrict?

A. Yes. But not necessarily by choice.

APPENDIX 5

PARTIAL TESTIMONY OF

TYREE IRVING

AT THE TRIAL HELD ON FEBRUARY 25, 1992

Pages 88-94

BY: MR. RHODES:

Q. Mr. Irving, do you hold or have you held any position in any bar associations?

A. I am the past president of the Magnolia Bar Association.

Q. And when were you president of the Magnolia Bar?

A. When was I?

Q. Yes, sir.

A. To be honest, I can't recall right now. I believe it was 86 or ' 87 or somewhere in that area. I have also served several years as treasurer of the Magnolia Bar Association.

Q. Mr. Irving, what is your experience, work experience, as far as being an attorney?

A. Well, when I first graduated from Ole Miss, I worked for approximately six months as a staff attorney with North Mississippi Rural Legal Services while I was waiting for my clerkship with the Mississippi Supreme Court to commence, which began on, I believe it was June 1 or July 1 of 1975, and I worked for the late chief justice of the Mississippi Supreme Court for a year. When that was over, I went to New York City and worked as the Earl Warren fellow with the NAACP Legal Defense and Educational Fund. I returned to Mississippi after a year and set up private practice in Laurel, Mississippi. I worked there as a solo practitioner, I believe, about six, seven, eight months. And then I was appointed Assistant United States Attorney for the northern district of Mississippi. And I worked in that

position approximately 15 months, after which I left and went into private practice as a partner in the newly formed law firm of Walls, Buck & Irving. I was there until the end of '88 and then I came back to my home county, which is Leflore County. I ran for public office, and after being unsuccessful in that effort, I went into private practice there in Leflore County, and that's where I am now.

Q. Which public office did you run for?

A. I ran for chancery judge of the Seventh Chancery District, Subdistrict 2.

Q. And do you know which counties comprise that?

A. Yes, sir. The counties: Leflore, Quitman, Tallahatchie, and Tunica. Those counties in their entirety.

Q. And for the record, what is your race?

A. I am African-American.

Q. Did you have an opponent in that race?

A. I did.

Q. And do you know who your opponents were and what were their races?

A. In the election that was held April 4 of 1989, there were three of us in the, I believe, the Democratic primary. Jon Barnwell, who is now Chancellor Barnwell and Shirley Rice, and myself. I ran again in November of '90, and my opponent in the race at that time was Chancellor Jon Barnwell.

Q. When you campaigned for the office of chancellor did you experience any difficulty in being able to wage an effective campaign?

A. Of course, the — quite a bit of difficulties. The Subdistrict 2 of the Seventh Chancery District is a fairly long district. It extends from approximately five or six miles north of the Humphreys County — well, I should say north of Belzoni to approximately 10 miles south of the Tennessee border. It's largely a rural agriculture area.

THE COURT: Let me interrupt you just a minute so I can understand.

A. Yes, sir.

THE COURT: You ran April of 1989. Was that the regularly scheduled election? And then you said you ran in November of 1990. I assume that that was the special election schedule after the resolution of *Martin v. Allain.*

A. The April election was the election that was scheduled after the resolution of *Martin v. Allain* and the November of '90 was the regular scheduled election. It went back into the regular rotation cycle.

THE COURT: All right. So the subdistrict in which you ran was created as a result of *Martin v. Allain.*

A. That is correct, Your Honor.

THE COURT: All right.

BY: MR . RHODES:

Q. If you could continue about difficulties you experienced.

A. I just described the length of that district. Of course, it takes quite a bit of time just to travel from one end of the district to the other. Secondly, the fact that it's very rural, it's very densely — excuse me, sparsely populated throughout that subdistrict with the exception of Greenwood, for the most part probably has the -- not probably. It does have the largest concentration of voters in that district. And I recall in Tunica County and Tallahatchie County you have quite a few precincts dispersed throughout those counties and a lot of little what I would call hamlets, but it's important to try to get in those little areas to campaign. And it just, you know, from a time perspective as well as a cost perspective, all of my campaign was by car, of course. I didn't have any means of or the funds to fly from this area to that area, so it was a matter of driving up and throughout that district. Very time consuming and very costly to just to try to get in all of the little hamlets throughout that district.

Q. I believe you testified that the northern part of your election district ran about 10 miles south of Memphis and Tunica County. If you had to wage a media campaign such as television, what market would you have had to gone to?

A. Well, I didn't do any television except, I guess, a still picture on the cable weather network there in Leflore County. That was a still picture. And I did that only in one of the campaigns. Most of the media that I — well, all of the media that I attempted to utilize was radio, and because of the way that district is laid out, it was necessary — it would have been necessary if I had covered the entire district to go into the Memphis market to buy radio ads on the radio stations out of Memphis to cover the northern flank of the district, and then I had to deal with radio stations there in the Delta to cover the southern and portions of the central part of the district. I never was able to, because of lack of funds, to do any advertising on the in the northern flank. So for the most part, Tunica County, I was not able to do any advertising in — radio advertising, that is, in Tunica County and in portions of Tallahatchie and Quitman County did not receive any advertising from radio. There were some stations in what, I believe Charleston that covered portions of Tunica County — excuse me, portions of Quitman County and maybe just a little bit of the southern tip of Tunica, but I talked to a lot of folk there in Quitman, excuse me, in Tunica County and none of them ever heard anything on the radio, so it was my understanding that the reach of those radio stations out of Greenwood did not, you know, get that far.

Q. What about television?

A. No, I didn't do any advertising on television, as I said, but had I — except for that still shot that I spoke of. If I had done any television advertisement, it would have been absolutely necessary to go into both of those markets, that is, the Memphis market and the Delta market because the Jackson — in Greenwood, for example, we get, of course, the television station in Greenville and the television station there in Greenwood and television stations out of Jackson that — but the folk in Tunica County and in Quitman County, I believe their market comes — television stations come out of Memphis and they don't get the basic Jackson stations

nor the same — I think maybe in some of the towns in the central part of that district may pick up the Greenwood and the Greenville station, but it would have been absolutely necessary to cover the entire district to advertise both in the Memphis market and the Jackson and Delta market.

Q. In terms of costs, which would have been more expensive for you, running a television campaign, running a radio campaign, or campaigning door to door and with groups and organizations?

A. Of course, a television campaign, I suppose, would have been the most expensive. As I said, we didn't do any of that. The radio, I mean I chose radio in the areas we did advertise because it was the cheapest and I thought I could get the most bang for my bucks by going radio. Of course, the door-to-door campaigning is always expensive in the sense that in the rural areas such as that, I mean you, if you are going to effectively campaign those areas, you have got to have large numbers of folk out there, not just yourself, and you have got to at least, if you don't do anything but pay the folks' expenses, gas expenses. You get into quite a bit of money if you are trying to fan out and canvass the entire district.

Q. Did you personally or did your campaign — I know you did not know the contributions from — or what sources they were from for your campaign, but did your committee experience any difficulty in raising funds with which to wage your campaign?

A. Oh, quite a bit of difficulty, yes, sir.

Q. And what community did your campaign funds come from primarily, the black community or the white community?

A. Probably 99.99 percent black community.

Q. Now, prior to your running for the office of chancellor in that district, are you aware of whether or not any other black person has ever been elected chancellor or circuit judge in that region of the state commonly referred to as the Delta region?

A. No. No one has — no black American has been elected.

APPENDIX 6

PARTIAL TESTIMONY OF

SOLOMON OSBORNE

AT THE TRIAL HELD ON FEBRUARY 25, 1992

Pages 101-104

BY: MS. McDONALD:

Q. And what, if any, political offices have you run for during your —

A. No, no, 4. District 4. Subdistrict — District 4, Subdistrict 3, yeah.

BY: MS. McDONALD:

Q. Okay. And what counties does that comprise?

A. Holmes, Leflore, Washington, Sunflower, Humphreys. But I only ran in Holmes and Leflore.

Q. Was that the subdistrict?

A. Right. Subdistrict 3 covered two counties.

Q. Okay. Now, during the course of your campaign, did you have occasion to — well, who was your opponent?

A. The incumbent, Judge Gray Evans.

Q. And did you run as a Democrat or a Republican?

A. Democrat.

Q. Did he run as a Democrat or a Republican?

A. Independent, I believe.

Q. Okay. And what is his race?

A. White.

Q. Now, were you successful in that race?

A. No. You mean did I win?

Q. Right.

A. No.

Q. During the course of your campaign, could you describe for us how you campaigned, was it a media campaign or was it like grass roots, door-to-door campaign?

A. Basically door to door. Really didn't have any funds to do a media campaign.

Q. Now, not that you necessarily know who your funding sources or — well, who your specific funding sources were, but do you know where your support came from, your financial support?

A. Basically from the blacks in the district.

Q. Okay. And during the course of your campaign were you invited to speak at various organizational meetings.

A. Churches and civic organizations, yes.

Q. Would you characterize whether or not you were invited to speak at more black organizations than white?

A. Only black organizations.

Q. Okay. You were not invited to speak at any white organizations?

A. No.

Q. And what did your campaign primarily consist of?

A. What do you mean?

Q. You mentioned earlier door-to-door campaigning.

A. Right.

Q. Did you do any media campaigning at all?

A. No, I didn't.

Q. Okay. Why didn't you do any?

A. Basically we didn't have any money.

Q. Did you distribute campaign literature at all?

A. Yeah, we did leaflets and fliers.

Q. And —

A. And, you know, the little push cards, things of that nature, posters. We had posters, too.

Q. Okay. What kind of campaigning did your opponent do?

A. I guess all kinds that people normally do in political races. He was on TV, in the newspaper, visited churches in the black community. And other organizations, too, like, you know, the NAACP and the Voters League, and especially in Greenwood the Freedom Democratic Party, and in Holmes County these were predominantly black organizations.

Q. Did he also speak at white — predominantly white

organizations?

A. Well, the only thing I know is what I saw in the paper. Yeah.

Q. And what was that?

A. I saw excerpts from addresses he made at various organizations.

Q. And what, if any, political offices have you run for during your —

A. Circuit judge in District 7, Subdistrict 3.

APPENDIX 7

FACTS THE DISTRICT COURT

TOOK JUDICIAL NOTICE OF

AT THE TRIAL HELD ON FEBRUARY 25, 1992

Pages 119-120

THE COURT: All right. The Court, then, will take Judicial notice, as requested, from the opinion of this Court in *Martin v. Allain*, found at 658 F. Supp. beginning at 1183 as follows: The black voting-age populations in the chancery court districts before the subdistricts were created as those figures are found in the text on pages 1187 through 1192; a segment of the history of official discrimination as found on page 1192; and of fact number 31 concerning racial appeals by candidates, found on page 1195; also the racial makeups of the subdistricts that the Court created as those figures appear in the text of *Martin v. Mabus*, which is published at 700 F. Supp., beginning at page 327. And those figures are contained in the text thereof at pages 336 through 343.

The Court will not take judicial notice of fact number 21 on page 1193 concerning whether or not Justice Reuben Anderson was the first successful judicial black candidate. It is unnecessary to do that since the facts concerning ex-Justice Anderson, Justice Banks who is now serving, are part of the stipulation. Likewise, the fact that Mr. Lichtman characterized Mr. Anderson's victory as an aberration contained in fact 23 on page 1194, it is not necessary for the Court to take judicial notice of since the Court did not make a finding as to that. That was simply a statement of what Mr. Lichtman had testified to. Mr. Lichtman — the stipulation concerning what Mr. Lichtman would testify in this case also contains the same thing, so it is unnecessary to take judicial notice of that.

APPENDIX 8

PARTIAL TESTIMONY OF

KATHRYN H. HESTER

AT THE TRIAL HELD ON FEBRUARY 26, 1992

Pages 159, 162-163, 210-211

MR. KIRCHMAYR: Your Honor, at this time we would move to have Ms. Hester recognized as an expert in the field of redistricting, that is, the field of drawing electoral districts, and also as an expert and political analyst in voting patterns.

MR. RHODES: Your Honor, we have no objections in recognizing her in the area of redistricting, the drawing of lines, demography, topography, but we do object to her being recognized as an expert in the field of political analysis of voting patterns. We would not object if she was to be offered as an expert in analyzing statistical data rather than actually in the field of analyzing voting patterns by race.

BY: MR. KIRCHMAYR:

Q. Based on what you have reviewed and testified to today, specifically concerning the successful elections of two black lawyers, former Justice Reuben Anderson and Justice Fred Banks, to the Mississippi Supreme Court, in your opinion, were these elections aberrations?

MR. RHODES: Objection, Your Honor. Whether or not elections are aberrational depends upon whether or not elections fall within a trend or voting patterns by race. And in order to draw that conclusion, the expert must be able to analyze voting patterns by race using the standard methodology, so we would object.

MR. KIRCHMAYR: Your Honor, in that regard I would certainly disagree. I think that the term "aberration is a very easy term for one that has been — to understand, is

it unusual. And I think that the qualifications of this witness certainly allow her to make that conclusion based on the material that she has reviewed, based upon the political campaigns that she has been involved in. I think she can make that conclusion.

THE COURT: I think that the term in the context of this lawsuit lies within the statistical analyses that the other experts have done, and that is outside of the expertise of this witness. Certainly, if she would have an opinion, I don't think that opinion would be of any assistance to the Court related otherwise to — the objection is sustained.

MR. KIRCHMAYR: If the Court will indulge me just a moment.

(Off the record.)

MR. KIRCHMAYR: Your Honor, for the purposes of the record we understand the Court's objection, but could I have her to proffer her answer just for purposes of the record?

THE COURT: Yes, sir.

A. The term aberration in its most common meaning is tending away from the norm. The two black candidates that have run for the Supreme Court in the central district, a district which is a majority white voting-age district, have both won with substantial white support and are now the norm rather than an aberration.

MR. KIRCHMAYR: We have no further questions and tender the witness at this time, Your Honor.

APPENDIX 9

PARTIAL TESTIMONY OF

BOB OWENS

AT THE TRIAL HELD ON FEBRUARY 27, 1992

Pages 286-293

BY: MS. McDONALD:

Q. Okay. What races were you associated with, could you give the Court some kind of indication about, and what kind of media coverage? You received free media coverage?

A. I have been involved with from — three justice court races. Clyde Chatman, either served as manager or co-manager in his campaign for two of his election. I was the manager for Denise Owens, my wife's campaign for chancery court judge. I was one of the strategists involved with the James Graves campaign, campaign for circuit court judge, involving Judge Gibbs' campaign. I also served as the coordinator, one of the coordinators for Judge Banks' campaign for the Supreme Court.

Q. Okay. And let me ask you this. In judicial elections what is the media coverage strategy in those judicial elections?

A. Okay. With judicial elections, and not saying this wouldn't apply to other elections, but my involvement has mostly been with judicial elections. The first thing you analyze is the racial makeup of your district. If you have a reasonable chance of winning with the number of black votes that's available, we are talking 60 some percent black votes, then your media strategy would be to — let me see. Your strategy would be to maximize your black votes, to minimize the white votes that come out to vote in that election. And to do that, you would stay away from media that has the effect of going over into the white community. It's an accepted principle in

judicial election is you stay out of their community because what you are doing, you stir up your votes, or you stir up people to come out and vote against you, and that costs you money, time, and you are only losing there.

Q. Okay. Now, you mentioned that you were a strategist in the recent Banks election to the Supreme Court. Would you tell me whether you campaigned in the white community in that election?

A. I served as one of the coordinators in his campaign, one of three coordinators. I wouldn't classify as the strategist, but I was involved in all decisions that was made concerning strategy and have input and all the things but it was the — overall strategy was made sort of like a group.

Q. And you were privy to that decision and you participated in the making of that decision?

A. Yes. Very few things was made — very few decision was made that I didn't either agree in the beginning or agree in the end before it was actually done. I was a very active —

Q. Can you tell me — excuse me. Could you tell me what that strategy was in the white community, if you campaigned in the white community?

A. Well, Judge Banks campaign, we had to first look at the weakness and strengths of the campaign. The strength being that he's super qualified, education, as a judge, intellectual, et cetera, and we had strengths on one side. The main weakness we had was his race, was he's black. That's the main thing we had to deal with during the campaign. That, with the fact that he's running in a district that's majority white. So our main strategy during the whole campaign is we have a black candidate running in a white district, how can we possibly get a small percentage of the white votes for a candidate that this is the only issue that we were weak on is his race. Without the race issue, we got a landslide candidate because he — you got everything you dream of for a candidate. So we had to look at a possibility of how

do we get into the white community and attract the few whites that might consider voting for a black candidate. To do that, there's counties that we decided the best strategy is not to go in that county. We just don't do anything. Just hope you get a percentage of the white votes by them — some out here by qualification, but the person Fred Banks don't go into that county.

Q. How did they hear about the qualifications and did you spend any money on getting out his qualifications, et cetera?

A. Okay. Then when we used the media — okay. Let me just say, the strategy would be if there are some counties that there's some chance of some white folks voting, you let Fred go there to a certain length. He does not go there as a normal candidate and just campaign and meet people. He only go there if we can find respected white person who's willing to walk beside him and say "he's all right" type of position. And if that — if you can identify that person in that community, that works, but you can't just send him down just like a candidate into a — into the white community and say "I'm Fred Banks. I want to talk to you about my qualification." That does not work. Okay. But in those communities that you can't identify the respected person to do that, and I use respected loosely, respected to the people in that community, in that, you know, in that particular group.

Then for the — you could not get all his qualification that way, but that was because the people that we would actually go visit and some counties we just didn't go in the county period because we only lose vote by having him to physically appear. Then we go to the media coverage and then we have to have a real detailed strategy for how can we sell this person' s qualification who we have no fear that he can — we got the best qualified person, but not offend people because of his race. Okay? Then you try to say how can I get them to like him and focus on qualification despite his race. That's the reason you didn't see any pictures. The feeling

is if you will see his qualifications, see he is so qualified you might like him before you realize he's black and then, hopefully, a small percentage still would go ahead and vote for him despite the fact that he's a black candidate. So the media coverage was totally geared towards the small white vote that we needed to win. And we had to gamble on spending our money on media totally addressed to the people we thought 25, 30 percent of the people that we thought we could pull from the white community.

Q. And how much of your spending would you say was on media targeted to the white community to get his qualifications out?

A. We originally had a budget, and that budget was divided among what we thought we were going to spend in the black community to be sure he's well-known there and get people out to vote, et cetera, and the white community for the television, et cetera, because we realized we didn't have the numbers in the black community, we ain't going to spend — eliminating the money for the black community almost totally and giving it all to the white community and the things that was directed for the white community. Now, when I say "totally," you know there's some mailing we would do in the black community to keep people and stuff, but the original strategy would have been — in the campaign was to mail out letters, et cetera, to the black community, do we get out the vote and actually walk the streets. The money we had budgeted for that all was eliminated to go because we had to try to get this 25 percent or 30 percent.

Q. Okay. Can you give me an estimate in terms of percentages, maybe, as to how much of the monies that were expended that were targeted to getting the vote in the white community; if you know?

A. Yes. What I am saying is that we took all the money, we took it all, and I coordinated a lot in the black community and with the strategies that we don't have any money. We raised more money than we expected to

raise. But we took all the money basically and, you know, we say — an example is for to get out to vote except it might be $20,000 originally budget, we might get 200, because we really made the decision that, okay, we are going to have to spend all of our money. We are going to have to spend three to four times the money our opponent is spending in the white community to get out vote, and we are going to hope and pray and use our friends and Fred's former associates to try to get the word to the black community because the trouble in getting 25, 30 percent of the white votes, it takes everything you got and Fred had — Judge Banks had to have those votes and we made the gamble with a real fear that we could easily lose this race by the black not turning out because we was not motivating people and wasn't campaigning in the black community, so all of our money went to the white community to try and get those votes and try to deal with the race issue and try to get them to vote for him despite of his race.

APPENDIX 10

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MAGNOLIA BAR ASSOCIATION, ET AL.
PLAINTIFFS

VS. CIVIL ACTION NO. J90-0413(B)

ROY NOBLE LEE, ET AL.
DEFENDANTS

(FILED FEBRUARY 25, 1992)

STIPULATION REGARDING PLAINTIFFS'

EXPERT TESTIMONY

The parties acknowledge that this stipulation will reduce the costs and time of litigation in this case commensurate with the goals of the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471, *et. seq.* The parties specifically reserve all objections to the relevancy of any of these facts and conclusion.

1. The parties hereby stipulate that if the Plaintiffs' were to call Dr. Allan J. Licthman and Dr. Richard Engstrom to testify in this case that their testimony would be as reflected below. Unless otherwise indicated in this stipulation, the parties are not stipulating to any facts or conclusion, but only that if those witnesses were called, the below reflect the testimony that they would present. The parties stipulate that Dr. Allan J. Lichtman is an expert witness in racial bloc voting, political systems, and quantitative and socioeconomic analysis as well as the area of minority vote dilution. Dr. Lichtman has been admitted as an expert witness in voting behavior, political history, political systems, and

quantitative and socioeconomic analysis in some thirty (30) federal court cases in which he has presented oral or written testimony.

2. In conjunction with his work as an expert witness, Dr. Lichtman has analyzed numerous black v. white elections in the State of Mississippi. Dr. Lichtman only analyzed black verse white election contest in reaching his conclusion. The analyzed elections include judicial elections throughout the State of Mississippi (including Circuit, Chancery, and Supreme Court elections), elections in the Second Congressional District, and elections in the following cities and counties: Cleveland, Greenwood, Jackson, Oxford, Bolivar County, Chickasaw County, Grenada County, Hinds County, Madison County, Monroe County, Newton County, and Yazoo County. The analyses covers an approximately twenty-five-year period through 1992 and includes a wide range of local, state, and federal offices.

3. The parties stipulate that the Plaintiffs' expert, Dr. Lichtman, performed the analysis using the accepted and recognized ecological regression and homogeneous precinct methods, and that the values for (r) (r^2), which measures the strength of the correlation and linear relationships of the variables being examined, are acceptable. Racially polarized voting occurs when black voters generally prefer different candidates. Extreme case analysis and homogeneous precinct analysis refer to the same methodology utilized for analyzing election and voter data for precincts predominantly of the same group, in the instant case predominantly black and predominantly white precincts.

4. Results of the ecological regression analyses show a pattern of severe racial polarization in elections held in the State of Mississippi. Analyses results show that black voters are a highly cohesive electorate who invariably support black candidates by substantial majorities. In contrast, white voters strongly unite behind white candidates, generally providing very little crossover votes for black candidates. This very strong

bloc voting by whites would pose a formidable obstacle to black candidates seeking office in districts with a white voting age majority. Dr. Lichtman's professional opinion is that voting patterns by race do not vary substantially throughout Mississippi. Generally, whites bloc vote within the same range or degree throughout all of Mississippi, and black voters bloc vote within the same range or degree throughout all of Mississippi. In the elections analyzed, generally 70-99% of white voters voted for white candidates and 70-99% of black voters voted for black candidates in black vs. white contests. There were a couple exceptions, including the Reuben Anderson/ Richard Barrett election, but these exceptions were abberational and did not indicate a new trend or change in the existing pattern of racial bloc voting in black vs. white contests.

5. White bloc voting exists such that generally white voters defeat the candidates preferred by the black electorate in black vs. white contests.

6. In the Banks vs. Dillard Supreme Court election, ecological regression analyses shows a much higher turnout rate of white than of black voters. An estimated 27% of voting age blacks turned out to vote compared to 45% of voting age whites. Thus black candidate Banks achieved a narrow (51 to 49 percent) victory in the presence of racial bloc voting and black/white turnout differentials. This result does not, however, alter Dr. Lichtman's previous finding that white bloc voting is generally sufficient to defeat black candidates in white-majority districts. First, Banks gained election as a result of the combination of virtually unanimous (99%) black support combined with a 30% white crossover vote. Not only is it unrealistic to assume 99% black support for black candidates, but based on Dr. Lichtman's previous analyses of numerous black versus white contests, including some 20 judicial elections, it is clear that Bank's white crossover vote is much higher than the crossover vote that black candidates generally can expect from white voters. Generally, black candidates

can expect no more than a 15% white crossover vote in black vs. white contests. Without maximum black cohesion and such atypical high crossover, Banks, would not have been elected from Supreme Court District 1. It should be noted that like former Justice Reuben Anderson, Banks was an appointed incumbent seeking election. Not only in Mississippi, but also in other southern states, appointed judicial incumbents have significant advantages not available to other black candidates. In Alabama, for example, appointed Justice Oscar Adams was elected to the State Supreme Court, whereas white bloc voting was consistently defeating non-incumbent black candidates for judicial office, statewide. Similarly, in Florida, appointed Justice Joe Hatchett was elected to the State Supreme Court although white bloc voting was consistently defeating non-incumbent black candidates for judical office. Dr. Lichtman's information on Alabama was derived from his participation as an expert witness in the state-wide judical case *(SCLC vs. Seigelman)*. His information on Florida was derived from his participation as an expert witness in judicial cases in the Jacksonville and Tallahassee circuits *(Nipper v. Chiles* and *Davis v. Chiles)*.

7. In Dr. Lichtman's professional opinion, the dilutive effect of multi-member Supreme Court districts is the same as other multi-member districts, both judicial and non-judicial. Under conditions of racially bloc voting, candidates supported by a cohesive black majority are generally defeated by white bloc voting. The study of Mississippi elections shows that white bloc voting is sufficiently strong generally to defeat candidates of choice of the black electorate in majority-white multi-member districts.

8. In addition to the creation of single-member districts with substantial black majorities, it is possible to remedy the dilutive effects of multi-member districts through limited voting. This procedure, limits to a single vote the number of votes that an individual can cast in

an election for several members of a collegial body such as the State Supreme Court. It enables a cohesive minority group to concentrate its votes on a single candidate, and, in turn, can prevent the majority from casting a sufficient number of votes to defeat that candidate. The adoption of limited voting, unlike the formation of multi-member districts, would require the elimination of staggered terms. All candidates must run simultaneously for office, so that minority voters could concentrate their ballots on a single candidate in a multiple candidate field.

9. The parties stipulates that Dr. Richard Engstrom is an expert witness in socioeconomic analysis, political systems, and political participation, and that Dr. Engstrom applied the standard methodology in analyzing socioeconomic data, by race, for the instant litigation.

10. In Dr. Engstrom's professional opinion, educational attainment is a central indicator of socioeconomic status and a major determinant of political participation. Blacks in Mississippi suffer seriously depressed levels of education compared to those for whites. According to the 1980 census figures for education and income (the latest data available), 47.3% of blacks in Mississippi have no more than an elementary school education compared to only 18.3% of whites. Less than a third (32.7%) of blacks had graduated from high school compared to 63.9% for whites. While 30% of whites had at least some college education, only 14.9% of blacks had some college education.

11. In Dr. Engstrom's professional opinion, disparities in education are reflected in disparities in income, another important determinant of political participation. Over half of black families in the State (55.1%) had an annual income of less than $10,000 compared to only 24.4% for whites. In contrast, 26.9% of white families had an income of $25,000 or more, compared to 7.5% of black families. Per capita income for blacks was $2,833,

compared to $6,484 for whites. The relative poverty of Mississippi blacks preclude them from possessing many of the politically relevant private resources to the same degree as whites. Specifically, blacks are less likely to have access to communication and transportation resources that facilitate efforts at political mobilization. For example, a third (30.1%) of housing occupied by blacks did not have a telephone compared to only 10.0% of those occupied by whites. Likewise, the occupants of 27.8% of the housing units in which black live are without a private vehicle, compared with only 6.8% of the units within which whites reside.

This the 24th day of February, 1992.

/s/Carroll Rhodes
CARROLL RHODES

/s/Deborah McDonald
DEBORAH McDONALD

ATTORNEYS FOR PLAINTIFFS

/s/Stephen J. Kirchmayr
STEPHEN J. KIRCHMAYR

/s/Giles Bryant
GILES BRYANT

/s/Robert E. Sanders
ROBERT E. SANDERS

ATTORNEYS FOR DEFENDANTS

APPENDIX 11

EXHIBIT P-36

CERTIFICATION

SPECIAL ELECTION
November 5, 1991

STATE SUPREME COURT JUDGE

DISTRICT ONE (CENTRAL), PLACE 2

County	Fred Banks, Jr. (D)	W. O. (Chet) Dillard (R)
Bolivar	4,070	2,155
Claiborne	2,951	820
Copiah	3,614	3,360
Hinds	35,083	31,454
Holmes	4,031	1,580
Humphreys	1,807	1,148
Issaquena	353	256
Jefferson	2,589	570
Kemper	2,205	1,616
Lauderdale	7,427	10,002
Leake	3,321	3,458
Madison	7,693	7,419
Neshoba	3,732	3,606
Newton	3,042	3,563
Noxubee	2,559	1,153
Rankin	9,326	17,876
Scott	2,989	3,627
Sharkey	1,200	783
Sunflower	3,759	2,221
Warren	6,802	7,265
Washington	5,857	4,358
Yazoo	3,712	3,659
TOTALS	118,122	111,949

Current District Statistics
02/23/92
10:02 PM

Total and Voting Age Population By Race
Current Supreme Court District

DISTRICT	TOTAL POP.	WHITE POP.	WHITE %	BLACK POP.	BLACK %	OTHER POP.	OTHER %
Total Population							
District 3 (North)	815,365	545,386	66.89%	264,978	32.50%	5,001	0.61%
District 1 (Central)	887,966	463,647	52.21%	414,478	46.68%	9,841	1.11%
District 2 (South)	869,885	624,428	71.78%	235,601	27.08%	9,856	1.13%
Total	2,573,216	1,633,461	63.48%	915,057	35.56%	24,698	0.96%

DISTRICT	TOTAL VAP	WHITE VAP	WHITE VAP %	BLACK VAP	BLACK VAP %
Voting Age Population					
District 3 (North)	583,931	413,956	70.89%	166,367	28.49%
District 1 (Central)	623,064	353,675	56.76%	263,205	42.24%
District 2 (South)	619,462	465,056	75.04%	148,097	23.91%
Total	1,826,457	1,232,687	67.49%	577,669	31.63%

District Ideal 857,739

District Deviation:

District 3 (North)	-4.94%
District 1 (Central)	3.52%
District 2 (South)	1.42%
	8.46%

APPENDIX 13
EXHIBIT P-37

State Total Population 2,573,216
Ideal for 9 single member 285,913
Ideal for 3 multi-member 857,739

Adjusted	Dist/County	TP	BP	a % a	TVAP	BVAP	a % a
D-11	III-1	286,351	180,216	62.94%	189,770	108,629	57.24%
	Dev. 438						
	Den % + .015%						
	III-2	283,619	132,831	46.83%	198,359	84,818	42.76%
	Minus Lawrence	-12,458	-4,132	-33.17%	-8,700	-2,559	-29.41%
		271,161	128,699	47.46%	189,659	82,259	43.37%
	Dev. 14,752						
	Den. % -5.16%						
	III-3	308,235	153,289	49.73%	221,330	100,339	45.33%
Minus	Madison Precinct	-12,774	-1,191	-9.32%	-9,470	-888	-9.38%
		295,461	152,098	51.15%	211,860	99,451	46.94%
Minus	Ridgeland Precinct	-10,332	-1,960	-18.97%	-8,048	-1,503	-18.68%
		285,129	150,138	52.66%	203,812	97,948	48.06%

Dist/County	TP	BP	a % a	TVAP	BVAP	a % a
	285,129	150,138	52.66%	203,812	97,948	48.06%
Minus Madisonville Precinct	-723	-137	-18.95%	-535	-83	-15.51%
	284,406	150,001	52.74%	203,277	97,865	48.14%
Minus Trace Harbor Precinct	-836	-17	-2.03%	-580	-12	-2.07%
	283,570	149,984	52.89%	202,697	97,853	48.28%
Minus Hinds Precinct (78)	-4,618	-106	-2.30%	-3,714	-91	-2.45%
	278,952	149,878	53.73%	198,983	97,762	49.13%
Minus Hinds Precinct (46)	-2,319	-55	-2.37%	-1,720	-41	-2.38%
	276,633	149,823	54.16%	197,263	97,721	49.54%
Minus Hinds Precinct (79)	-3,205	-232	-7.24%	-2,482	-157	-6.33%
	273,428	149,591	54.71%	194,781	97,564	50.01%
Dev.	-12,485					
Dev. %	-4.379					
TOTAL 3 District	831,940			574,210	288,455	50.24%
Dev.	-25,799					
Dev. %	-3.01%					

APPENDIX 14
P-1

90 pop county by race

County	Total Pop.	White	Black
Adams	35,356	18,028	17,212
Alcorn	31,722	25,085	3,540
Amite	13,328	7,272	6,038
Attala	18,481	11,114	7,299
Benton	8,046	4,669	3,168
Bolivar	41,875	15,259	26,326
Calhoun	14,908	10,829	4,027
Carroll	9,237	5,560	3,654
Chicksaw	18,085	11,060	6,981
Choctaw	9,071	6,319	2,731
Claiborne	11,370	1,994	9,340
Clarke	17,313	11,312	5,977
Clay	21,120	9,789	11,266
Coahoma	31,655	11,001	20,454
Copiah	27,592	13,602	13,920
Covington	16,527	10,699	5,795
DeSoto	67,910	58,860	8,675
Forrest	68,314	46,672	21,001
Franklin	8,377	5,290	2,079
George	16,673	15,025	1,587
Greene	10,220	7,999	2,194
Grenada	21,555	12,563	8,916
Hancock	31,760	28,625	2,774
Harrison	165,365	127,630	32,281
Hinds	254,441	123,177	129,558
Holmes	21,604	5,176	16,375
Humphreys	12,134	3,856	8,222
Issaquena	1,909	833	1,072
Itawamba	20,017	18,596	1,359
Jackson	115,243	90,114	23,581
Jasper	17,114	8,410	8,687
Jefferson	8,653	1,185	7,462
Jefferson Davis	14,051	6,330	7,675
Jones	62,031	46,193	15,489
Kemper	10,356	4,407	5,739

County	Total Pop.	White	Black
Lafayette	31,826	23,151	7,980
Lamar	30,424	26,599	3,637
Lauderdale	75,555	48,706	26,260
Lawrence	12,458	8,300	4,132
Leake	18,436	11,086	6,558
Lee	65,581	51,260	14,049
Leflore	37,341	14,516	22,642
Lincoln	30,278	21,162	9,038
Lowndes	59,308	36,736	22,041
Madison	53,794	29,789	23,731
Marion	25,544	17,733	7,721
Marshall	30,361	14,842	15,378
Monroe	36,582	25,394	11,097
Montgomery	12,386	6,916	5,440
Neshoba	24,800	16,945	4,611
Newton	20,291	13,697	5,831
Noxubee	12,604	3,959	8,585
Oktibbeha	38,375	24,064	13,171
Panola	29,996	15,376	14,533
Pearl River	38,714	32,888	5,545
Perry	10,865	8,333	2,447
Pike	36,882	19,931	16,843
Pontotoc	22,237	18,917	3,246
Prentiss	23,278	20,477	2,741
Quitman	10,490	4,250	6,193
Rankin	87,161	72,033	14,610
Scott	24,137	14,829	9,171
Sharkey	7,066	2,339	4,686
Simpson	23,953	16,124	7,373
Smith	14,798	11,516	3,244
Stone	10,750	8,362	2,344
Sunflower	32,867	11,604	21,092
Tallahatchie	15,210	6,257	8,881
Tate	21,432	13,945	7,417
Tippah	19,523	16,251	3,233
Tishomingo	17,683	17,010	631
Tunica	8,164	1,992	6,148
Union	22,085	18,804	3,213
Walthall	13,352	8,252	6,054
Warren	47,880	28,879	18,666

County	Total Pop.	White	Black
Washington	67,935	28,334	39,197
Wayne	19,517	12,506	6,957
Webster	10,222	7,953	2,254
Wilkinson	9,678	3,123	6,532
Winston	19,433	11,151	8,094
Yalobusha	12,033	7,479	4,526
Yazoo	25,506	11,958	13,443
	2,573,216	1,633,461	915,057

1991 ELECTION CYCLE

POLITICAL COMMITTEE'S REPORT OF RECEIPTS AND DISBURSEMENTS

REG. # _____

Name of committee THE COMMITTEE TO ELECT JUSTICE FRED BANKS

Address of committee POST OFFICE BOX 55507, JACKSON, MS 39296 County HINDS

Telephone 601 939 3895

Name of director REUBEN ANDERSON

Name of treasurer HARRY M. WALKER

☐ Check here if above is different from previous report.

If the committee is authorized by the candidate:
Name of candidate _____
Address _____
Office sought _____
Political Party _____

RECEIVED
JAN 11 1992
SECRETARY OF STATE

TYPE OF REPORT

• CHECK BELOW THE CATEGORY OF REPORT YOU ARE SUBMITTING •

X	June 10, 1991 Periodic Report (Complete through May 31, 1991)	Mandatory
X	July 10, 1991 Periodic Report (Complete through June 30, 1991)	Mandatory
X	Sept. 10, 1991 Pre-Election Report (Complete through Sept. 7, 1991)	As required by law
X	Oct. 1, 1991 Pre-Runoff Report (Complete through Sept. 28, 1991)	As required by law
____	Oct. 10, 1991 Periodic Report (Complete through Sept. 30, 1991)	Mandatory
____	Oct. 29, 1991 Pre-Election Report (Complete through Oct. 26. 1991)	As required by law

EXHIBIT

51a

APPENDIX 15

X Jan. 10, 1992 Periodic Report (Complete through Dec. 31, 1991) — Mandatory

_____ Termination Report (Committee will no longer accept campaign contributions or make campaign expenditures and has no outstanding campaign debts or obligations.) — Required in order to terminate reporting obligations

NOTES: (1) Periodic reports are mandatory, even if no contributions or expenditures have transpired. In such case, the committee shall submit a report indicating "0" for total amount of reported contributions and expenditures during this period.

(2) Until a committee files its termination report, it must continue to file annual reports in accordance with Miss. Code Ann. Section 23-15-807(b)(ii) and (iii).

REPORTED CONTRIBUTIONS AND EXPENDITURES

	This period	Calendar year-to-date
Total amount of reported contributions	$ 6,500.00	$ 13,500.00
Total amount of reported expenditures	$ 37,464.19	$ 130,954.46

I certify that I have examined this report and to the best of my knowledge and belief it is true, accurate, and complete.

Kay Mitchell — 1-8-92

(Signature of director or treasurer) (Date)

Authority: Refer to Miss. Code Ann. Sections 23-15-801 1972 et seq. for statutory requirements.

Penalties: Failure to submit required reports, or failure to submit reports in accordance with statutory deadlines, or failure to submit valid reports shall result in prosecution in accordance with Miss. Code Ann. Sections 23-15-811 and -813 (1972).

SS91-2 1/15/91 Rev.

1991 ELECTION CYCLE

POLITICAL COMMITTEE'S REPORT OF RECEIPTS AND DISBURSEMENTS

REG. # _____

Name of committee COMMITTEE TO ELECT W. O. "CHET" DILLARD

Address of committee P. O. BOX 123, Jackson, MS 39205 County HINDS

Telephone 948-1547

Name of director Robert W. King, Finance Chairman

Name of treasurer _____

☐ Check here if above is different from previous report.

If the committee is authorized by the candidate:
Name of candidate W. O. "Chet" Dillard
Address P. O. Box 686, Jackson, MS 39205

Office sought Supreme Court
Political Party Republican

RECEIVED
JAN 13 1992
DICK MOLPUS
SECRETARY OF STATE

53a

TYPE OF REPORT

• CHECK BELOW THE CATEGORY OF REPORT YOU ARE SUBMITTING.

_____	June 10, 1991 Periodic Report (Complete through May 31, 1991)	Mandatory
_____	July 10, 1991 Periodic Report (Complete through June 30, 1991)	Mandatory
_____	Sept. 10, 1991 Pre-Election Report (Complete through Sept. 7, 1991)	As required by law
_____	Oct. 1, 1991 Pre-Runoff Report (Complete through Sept. 28, 1991)	As required by law
_____	Oct. 10, 1991 Periodic Report (Complete through Oct. 7, 1991)	Mandatory
_____	Oct. 29, 1991 Pre-Election Report (Complete through Oct. 26. 1991)	As required by law
XXXX	Jan. 10, 1992 Periodic Report (Complete through Dec. 31, 1991)	Mandatory

_____ Termination Report (Committee will no longer accept campaign contributions or make campaign expenditures and has no outstanding campaign debts or obligations.)

Required in order to terminate reporting obligations

NOTES: (1) Periodic reports are mandatory, even if no contributions or expenditures have transpired. In such case, the committee shall submit a report indicating "0" for total amount of reported contributions and expenditures during this period.

(2) Until a committee files its termination report, it must continue to file annual reports in accordance with Miss. Code Ann. Section 23-15-807(b)(ii) and (iii).

REPORTED CONTRIBUTIONS AND EXPENDITURES

	This period	Calendar year-to-date
Total amount of reported contributions	$ 23,021.58	$ 49,046.58
Total amount of reported expenditures	$ 24,046.01	$ 49,035.41

I certify that I have examined this report and to the best of my knowledge and belief it is true, accurate, and complete.

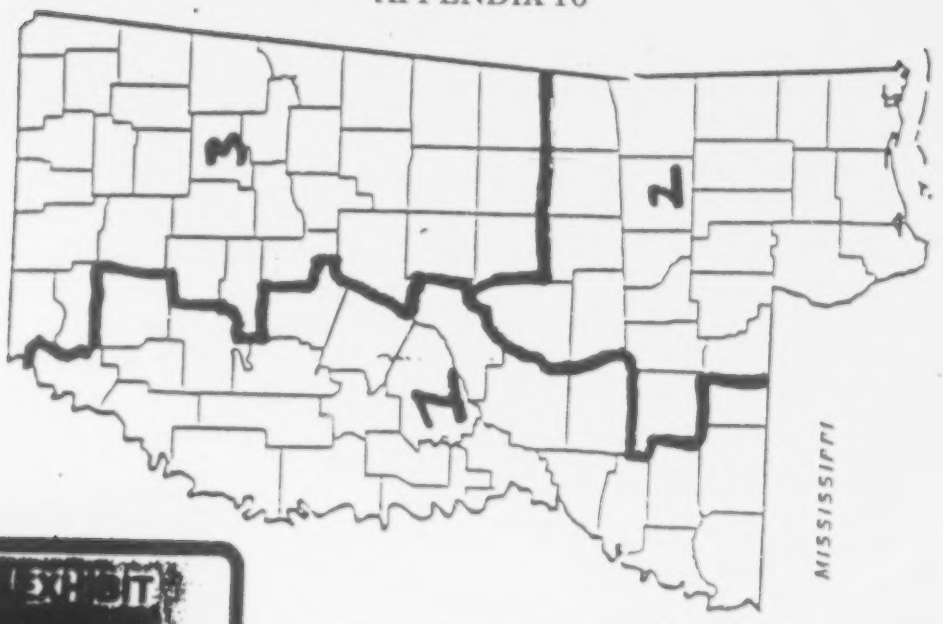
Robert W. King
(Signature of director or treasurer)

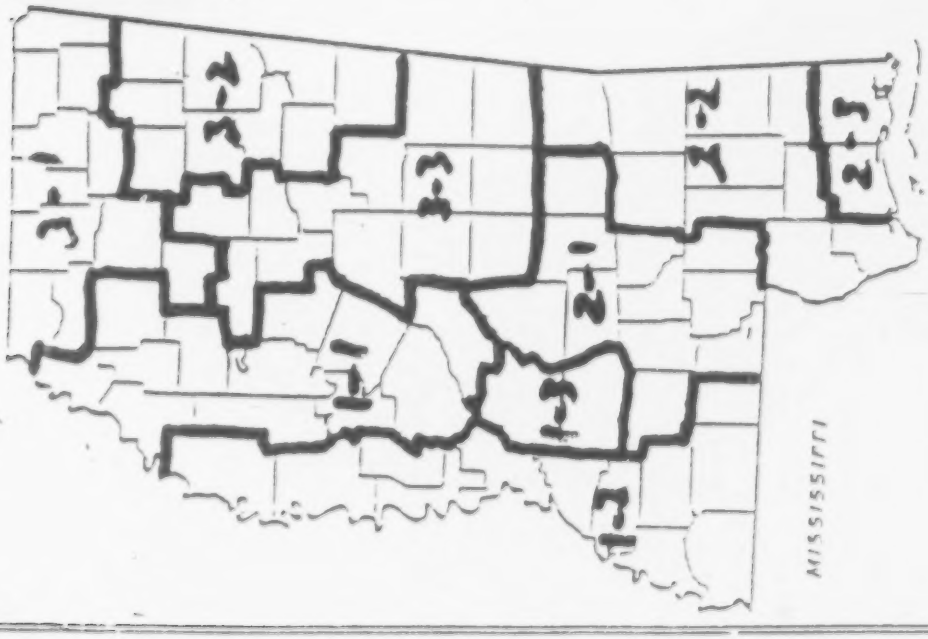
January 10, 1992
(Date)

Authority: Refer to Miss. Code Ann. Sections 23-15-801 1972 et seq. for statutory requirements.
Penalties: Failure to submit required reports, or failure to submit reports in accordance with statutory deadlines, or failure to submit valid reports shall result in prosecution in accordance with Miss. Code Ann. Sections 23-15-811 and -813 (1972).

SS91-2 12/27/90

APPENDIX 16





MISSISSIPPI

MISSISSIPPI

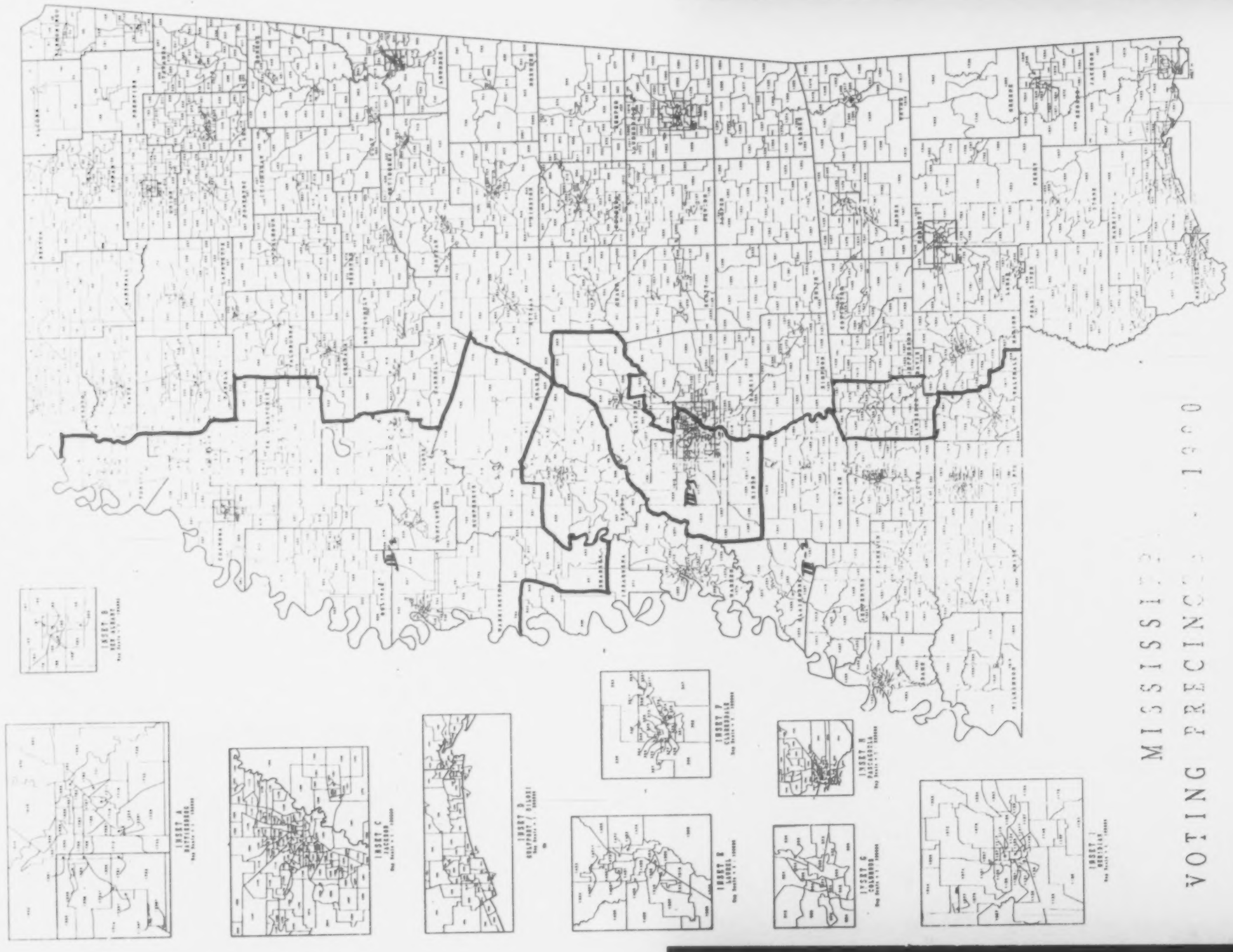
No. 1 STATE SUPREME COURT DISTRICT

... Subdivided 1990 Census Data

County	Total Pop.	Black Pop.
Sub 1		
Adams	35 356	17 212
Amite	13 328	6 038
Bolivar	41 875	26 326
Claiborne	11 370	9 340
Franklin	8 377	3 079
Issaquena	1 909	1 072
Jefferson	8 653	7 462
Pike	36 882	16 843
Sharkey	7 066	4 686
Warren	47 880	18 666
Washington	67 935	39 197
Wilkinson	9 678	6 532
Totals	290 309	156 453
Dev.	+4 396	
Percents	+1.53	53.89
Sub 2		
Carroll	9 237	3 654
Coahoma	31 665	20 454
Holmes	21 604	16 375
HUmphreys	12 134	8 222
Leflore	37 341	22 642
Madison	53 794	23 731
Panola	29 996	14 533
Quitman	10 490	6 193
Sunflower	32 867	21 092
Tallahatchie	15 210	8 881
Tunica	8 164	6 148
Yazoo	25 506	13 443
Totals	288 008	165 368
Dev.	+2 095	
Percents	+0.73	57.41

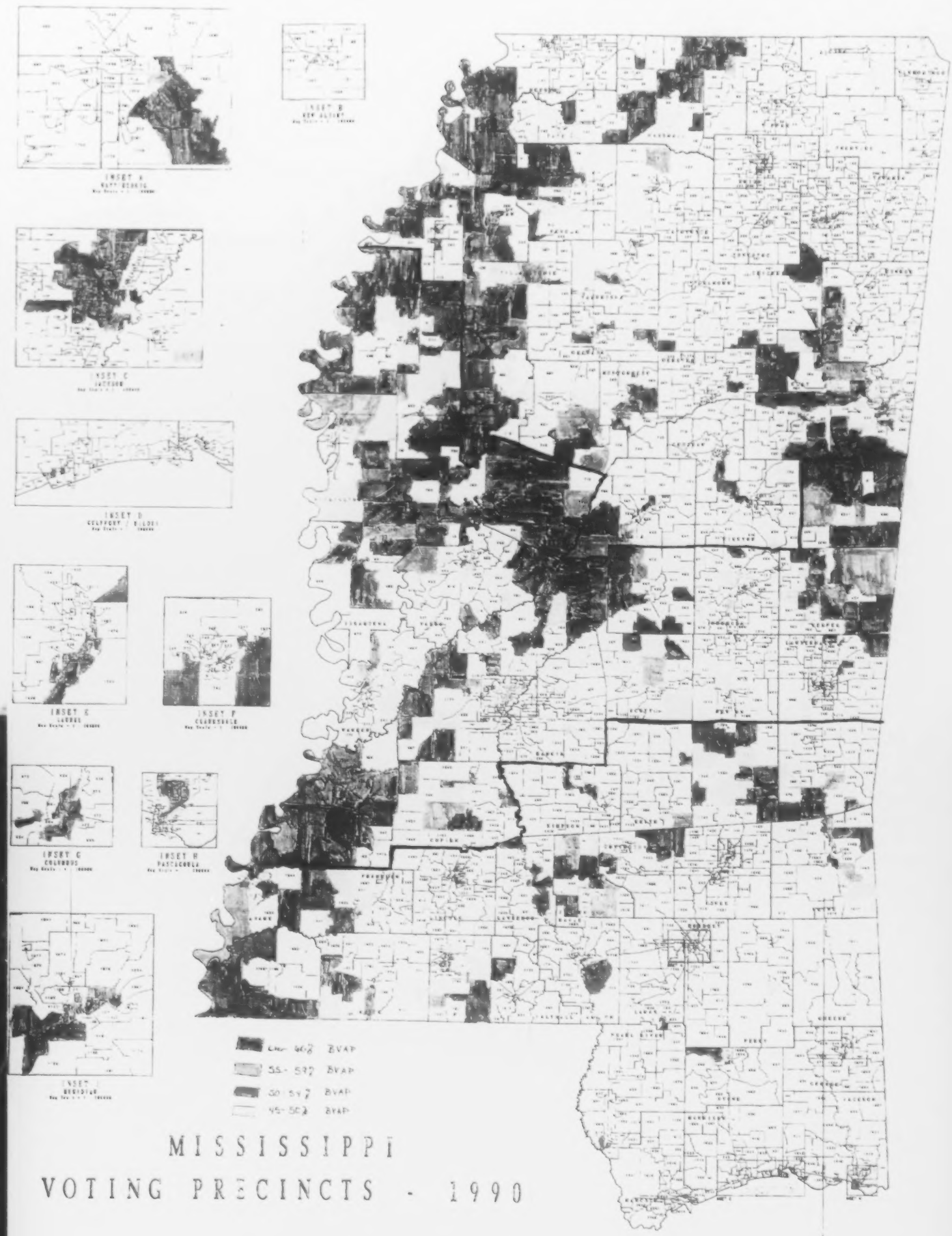
	Sub 3	
Copiah	27 592	13 920
Hinds	254 441	129 558
Totals	282 033	143 478
Dev.	-3 880	
Percents	-1.35	50.96
District Totals	860 350	465 299
Deviation	+2 611	
Percents	+0.30	54.08

APPENDIX 17



BEST AVAILABLE COPY

APPENDIX 18



MISSISSIPPI
VOTING PRECINCTS - 1990

MAPSCALE IS 1 500,000 OR APPROXIMATELY 8 MILES PER INCH

DATE PREPARED - DECEMBER 1990